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Human rights bodies and mechanisms

Study on the implementation of the principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members

Report of the Human Rights Council Advisory Committee

I. Introduction

1. In its resolution 29/5, the Human Rights Council requested the Advisory Committee to undertake a study to review the implementation of the principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members, together with the obstacles thereto, and to submit a report to it at its thirty-fifth session containing practical suggestions for the wider dissemination and more effective implementation of the principles and guidelines in order to eliminate discrimination and stigma associated with leprosy and to promote, protect and respect the human rights of those affected by leprosy and their family members. The Council encouraged the Advisory Committee, when elaborating the report, to take into account the views of Member States, as appropriate, relevant international and regional organizations, including the World Health Organization (WHO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), relevant special procedures, national human rights institutions and non-governmental organizations (NGOs), as well as the work done on the issue by relevant United Nations bodies, specialized agencies, funds and programmes within their respective mandates.

2. Throughout history, leprosy has been one of the most feared and misunderstood diseases. One of the major reasons for the stigma and discrimination directed against persons affected by leprosy and their family members is the deep-rooted misconception, both in the past and today, of leprosy, despite it being one of the least contagious human transmissible diseases. In the past, the lack of scientific knowledge of the causative organism of the disease, its mode of transmission and lack of effective remedy contributed to the stigma and discrimination against persons affected by leprosy and their family members. Many countries pursued policies that isolated persons affected by leprosy, such as quarantine, forced hospitalization and the establishment of leprosariums, which were maintained even when it was scientifically and medically proven that the disease was completely curable and not easily transmissible, thereby reinforcing stigma and

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discrimination and depriving persons affected by leprosy and their family members of the enjoyment of their fundamental human rights and dignity and reintegration into society.

3. With the introduction of multidrug therapy in the late 1980s, there is now an effective cure for leprosy. Since 1995, WHO has been supplying multidrug therapy free of charge to persons affected by leprosy in all endemic countries. Availability of drugs has allowed countries to focus their efforts on eliminating leprosy (defined as a prevalence rate of less than 1 case per 10,000 population) as a public health problem and on further reducing the leprosy burden post-elimination. Treatment with standard WHO multidrug therapy renders patients non-infectious within a few days. Since the mid-1980s, the global prevalence of leprosy has decreased from more than 5 million to less than 200,000 in 2015, and some 16 million people have been cured of the disease since the introduction of multidrug therapy. Nonetheless, although leprosy is no longer a major public health problem in most countries today, several millions of people affected by the disease worldwide continue to experience stigmatization and discrimination.

4. Within the international human rights system, concern regarding discrimination against persons affected by leprosy and their family members was initially expressed by the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-sixth session in 2004. In its resolution 2004/12, the Sub-Commission requested its member, Yozo Yokota, to prepare a preliminary working paper on the issue[1] to be submitted to the Sub-Commission at its fifty-seventh session. In the paper, persisting discrimination against persons affected by leprosy and their family members was highlighted, including in relation to employment, marriage, education, use of public places, such as hotels and restaurants, and means of transportation.

5. The Sub-Commission's work was discontinued owing to the reform of the United Nations human rights system in 2006. In 2008, the Human Rights Council took up the issue and noted the work already done by the Commission on Human Rights and the Sub-Commission. In its resolution 8/13, the Council requested OHCHR to collect information on the measures taken by Governments to eliminate discrimination against persons affected by leprosy and their family members and to hold a meeting to exchange views among relevant actors, including Governments, observers of the United Nations, relevant United Nations bodies, specialized agencies and programmes, NGOs, scientists, medical experts as well as representatives of persons affected by leprosy and their family members. In the same resolution, the Council requested the Advisory Committee to examine the report prepared by OHCHR and to formulate a draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members and to submit it to the Council for consideration by September 2009.

6. At its third session in August 2009, the Advisory Committee adopted the draft set of principles and guidelines, taking into account the report of OHCHR,[2] and submitted it to the Human Rights Council for consideration at its twelfth session in September 2009. In its resolution 12/7, the Council again requested OHCHR to collect the views of relevant actors including Governments, observers of the United Nations, relevant United Nations bodies, specialized agencies and funds and programmes, NGOs, scientists and medical experts, as well as representatives of persons affected by leprosy and their family members, on the draft principles and guidelines, and to make those views available to the Advisory Committee.

7. The Advisory Committee adopted the revised draft set of principles and guidelines at its fifth session in August 2010, and submitted it to the Human Rights Council at its fifteenth session in September 2010.[3] In its resolution 15/10, the Council took note with appreciation of the revised draft and invited the General Assembly to consider, as appropriate, the issue of discrimination against persons affected by leprosy and their family members, including possible ways to promote the principles and guidelines.

8. In December 2010, the General Assembly adopted resolution 65/215, in which it took note with appreciation of the principles and guidelines and encouraged Governments,

[1] E/CN.4/2005/2-E/CN.4/Sub.2/2004/48, p. 35.
[2] A/HRC/10/62.
[3] A/HRC/15/30, annex.

relevant United Nations bodies, specialized agencies, funds and programmes, other intergovernmental organizations and national human rights institutions to give due consideration to them in the formulation and implementation of policies and measures concerning persons affected by leprosy and their family members. The Assembly also encouraged all relevant actors in society, including hospitals, schools, universities, religious groups and organizations, business enterprises, newspapers, broadcasting networks and NGOs, to give due consideration, as appropriate, to the principles and guidelines in the course of their activities.

9. In response to the Human Rights Council's request in resolution 29/5, the Advisory Committee, at its fifteenth session in August 2015, established a drafting group composed of eight experts: Laurence Boisson de Chazournes, Laura-Maria Crăciunean-Tatu, Mario Luis Coriolano, Kaoru Obata, Ahmer Bilal Soofi, Yishan Zhang, Changrok Soh and Imeru Tamrat Yigezu. Xinsheng Liu and Obiora Chinedu Okafor joined the drafting group subsequently. The Chair of the group was Mr. Obata and the Rapporteur was Mr. Yigezu.[4] The Advisory Committee requested the drafting group to submit a preliminary report to it at its sixteenth session, taking into account the replies to the questionnaire that had been sent to States, national human rights institutions, international organizations, United Nations agencies, relevant treaty bodies and special procedures as well as international and national NGOs.

10. The Advisory Committee took note of the drafting group's preliminary report at its sixteenth session in February 2016, and requested the drafting group to recirculate the questionnaire to stakeholders who had not responded, in order to allow for more informed work. It stated that additional replies from States and national human rights institutions were especially welcome. The Advisory Committee also requested the drafting group to submit a progress report to it at its seventeenth session.

11. At its seventeenth session, the Advisory Committee took note of the progress report submitted by the drafting group and requested it to submit the draft final report at its eighteenth session, with a view to submitting the final report to the Human Rights Council at its thirty-fifth session.

12. A total of 57 responses to the questionnaire were received from 12 States, 9 national human rights institutions, 1 international organization and 35 international and national NGOs.[5] No responses were received from special procedures and treaty bodies. The

[4] The drafting group would like to thank Nathaniel Melaku, Faculty of Law, Addis Ababa University, Ethiopia, Izevbuwa Ikhimiukor, Osgoode Law School, York University, Toronto, Canada, and Yozo Yokota, Director, Center for Human Rights Affairs, Japan, for their valuable research input to the study. It also thanks the Nippon Foundation for facilitating the gathering of crucial information and its continued support during the preparation of the report, the International Federation of Anti-Leprosy Associations for facilitating responses from national associations of persons affected by leprosy and for providing inputs to the study; and, in particular, Yohei Sasakawa, Chair of the Nippon Foundation and WHO Goodwill Ambassador for the elimination of leprosy and ending stigma and discrimination against persons affected by leprosy who, from the outset, initiated action on the issue within the international human rights mechanisms.

[5] Responses were received from Bahrain, Brazil, Chile, El Salvador, Estonia, Japan, Montenegro, Qatar, Saudi Arabia, Thailand, the United States of America and Viet Nam; the national human rights institutions of Algeria, Denmark, Egypt, India, Montenegro, Rwanda, Serbia, the United Republic of Tanzania and Venezuela (Bolivarian Republic of); as well as World Health Organization, Nippon Foundation, Sasakawa Memorial Health Foundation, International Association for Integration, Dignity and Economic Advancement (IDEA), IDEA-India, The Leprosy Mission International-Bangladesh, The Leprosy Mission-Netherlands, Netherlands Leprosy Relief-Brazil, Movement for the Reintegration of Persons Affected by Hansen's Disease (MORHAN) (Brazil), Social Corporation for the Rehabilitation of Persons Affected by Hansen's Disease and their Family (CORSOHANSEN) (Colombia), Federation of Associations of Persons Affected by Hansen's Disease (FELAHANSEN) (Colombia), Ethiopian National Association of Persons Affected by Leprosy (ENAPAL) (Ethiopia), Fondation Kalipa pour le développement (FOKAD) (Democratic Republic of the Congo), Gerakan Peduli Disabilities and Lepra Indonesia (GPDL) (Indonesia), FAIRMED Foundation (Sri Lanka), Zen-Ryo-Kyo National Hansen's Disease Sanatoria Residents' Association (Japan), HANDA Rehabilitation and Welfare Association (China), The Leprosy Mission-Myanmar, Fontilles-India, Lepra-Bangladesh, Fontilles-Nicaragua, The Leprosy Mission-Niger, The Leprosy Mission-Nepal, Lepra Society-India, International Federation of Anti-Leprosy Associations (ILEP) (India),

majority of the responses from States came from countries in which leprosy was not endemic.

13. Two members of the drafting group, Mr. Okafor and Mr. Soh, participated in the international conference entitled "Towards holistic care for people with Hansen's disease, respectful of their dignity", held in Rome in June 2016,[6] where, they had the opportunity to discuss and hear, first hand, the testimonies of persons affected by leprosy and obtained relevant feedback on the measures that they expected their Governments to take for the effective implementation of the principles and guidelines. The information gathered at the conference is reflected in the present report.

II. Summary of the contents and status of the principles and guidelines

A. Summary of the contents of the principles and guidelines

14. The principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members[7] consist of two parts. The first part, "Principles", recognizes the basic human rights of persons affected by leprosy and their family members, which are already enshrined in the Universal Declaration of Human Rights and in other relevant international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities. The second part, "Guidelines", translates the principles into concrete action and provides for States' responsibility to respect, promote, protect and ensure the full realization of all human rights for all persons affected by leprosy and their family members. The principles and guidelines are designed to meet the specific needs of persons affected by leprosy and their family members and ensure them the rights that are or may be denied to them in countries globally.

15. Principle 1 reaffirms the right of persons affected by leprosy and their family members to be treated with dignity and their entitlement to all the rights specified in international human rights instruments. Principle 2 provides for non-discrimination against persons affected by leprosy and their family members on the grounds of having or having had leprosy. Principle 3 enunciates that persons affected by leprosy and their family members have the same rights as everyone else with respect to marriage, family and parenthood, while principles 4 and 5 stipulate that those affected by leprosy have the same rights as everyone else to full citizenship, identity documents and participation in public and political life. Principle 6 provides for the right to employment on an equal basis with others and the right to work in an inclusive environment, while principle 7 provides for the right to education and other training. Principle 8 stipulates that persons affected by leprosy and their family members are entitled to the fullest development of their human potential and to the full realization of their dignity and self-worth, while principle 9 provides for persons affected by leprosy and their family members to have the right to active involvement in decision-making processes regarding policies and programmes that directly concern their lives.

16. The "Guidelines" set out the actions that States should take to implement the principles and is divided into 14 sections. Guideline 1 sets out the general obligations of States in relation to the realization and protection of the rights of persons affected by

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Netherlands Leprosy Relief-Mekong (Viet Nam), The Leprosy Mission-England and Wales, The Leprosy Mission-Chad, IDEA-Nepal, Marcial Escobar on behalf of an NGO (Paraguay), International Federation of Anti-Leprosy Associations (ILEP) (Paraguay), The German Leprosy and Tuberculosis Relief Association (DAHW) (Sierra Leone), Persatuan Mandiri Kusta (PerMaTa)-National (Indonesia), PerMaTa-South Sulawesi (Indonesia), YPPCK Leprosy and Disability Care Foundation Java (Indonesia) and SOLE (Angola).

[6] The conference was jointly organized by the Pontifical Council for Health Care Workers, Good Samaritan Foundation and the Nippon Foundation, in cooperation with the Foundation Raoul Follereau, the Sovereign Order of Malta and Sasakawa Memorial Health Foundation.

[7] A/HRC/15/30, annex.

leprosy and their family members, including implementation of legislative, administrative and other measures to address laws, polices, customs and practices that discriminate against or forcefully segregate persons affected by leprosy and their family members; ensuring that authorities and institutions take steps to eliminate discrimination against persons on the grounds of leprosy; taking measures to ensure the full realization of the rights set out in the different human rights instruments; and consulting with and actively involving persons affected by leprosy and their family members in decision-making processes that concern them. Guideline 2 provides for equality and non-discrimination in relation to legal protection and the law, while guideline 3 provides for protection of the human rights of women, children and other vulnerable groups affected by leprosy. Guideline 4 promotes reunification of family members separated as a result of policies and practices relating to leprosy, while guideline 5 requires States to promote the full inclusion and participation of persons affected by leprosy and their family members in the community, ensure that they are not isolated or segregated from the community, provide social support to facilitate reintegration into the community and ensure their access to housing of their choice, including in leprosariums and hospitals, if they so wish.

17. Guideline 6 reinforces principle 5 and calls upon States to ensure that persons affected by leprosy and their family members enjoy the right to participate in the political process and to facilitate their access thereto, while guideline 7 emphasizes support for employment, including self-employment, the formation of cooperatives and vocational training. Guideline 8 elaborates on principle 7 regarding the right to education, while guideline 9 requires States to remove discriminatory and derogatory language, such as the term "lepers", from government publications. Guideline 10 encourages States to ensure access for persons affected by leprosy and their family members to public places, public transport, recreational and cultural facilities and places of worship. Guideline 11 requires States to provide persons affected by leprosy access to health care on an equal basis with others, institute early detection programmes and ensure prompt treatment of leprosy, include psychological and social counselling in standard care and ensure access to free medication. Guideline 12 provides for the economic, social and cultural rights of persons affected by leprosy and their family members, such as an adequate standard of living, financial assistance, as necessary, education and vocational training. Guideline 13 focuses on awareness-raising throughout society to foster respect for the rights and dignity of persons affected by leprosy through various means and media. Finally, Guideline 14 recommends that States establish a committee to coordinate activities relating to the rights of persons affected by leprosy and their family members and include information on policies and measures taken to end discrimination against persons affected by leprosy and their family members in their reports to the relevant treaty bodies.

B. Status of the principles and guidelines

18. The principles and guidelines build upon and essentially restate the core principles of international human rights law. Noted with appreciation by both the Human Rights Council and the General Assembly, they constitute the standard to be upheld by States in assuming their responsibility to prohibit all forms of discrimination against persons affected by leprosy and their family members.

19. The goal of the principles and guidelines is to ensure full respect for and full realization of all human rights of persons affected by leprosy and their family members. This goal is critical for every society in order to reaffirm the common faith enshrined in the Charter of the United Nations "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The global commitment to human rights cannot be achieved if the rights of any particular group of people, such as persons affected by leprosy and their family members, are not fully respected or protected. Thus, even assuming that the principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members are not legally binding on States, they nonetheless constitute persuasive authority with regard to States' practices to ensure the right to non-discrimination of persons affected by leprosy and their family members. In general terms, it could be underlined that aspects of the principles and guidelines are binding on States that have ratified human rights treaties with similar obligations.

III. Review of the implementation of the principles and guidelines

20. This section is mainly based on the responses provided by States, national human rights institutions and national and international NGOs [8] to the questionnaire on the elimination of discrimination against persons affected by leprosy, which form the main basis for the review of steps taken to date by States and other stakeholders towards the wider dissemination and more effective implementation of the principles and guidelines. The main thematic components of the principles and guidelines provided the basis for the review.

21. An overwhelming number of responses came from national and international NGOs, in particular associations of and organizations working with persons affected by leprosy and their family members. As mentioned earlier, relatively few responses were received from States and national human rights institutions and most of them, particularly those from States, were from non-endemic countries. Nonetheless, the responses received from organizations of persons affected by leprosy and international NGOs provided a more or less full picture of the positive measures taken by the States concerned and the gaps that need to be addressed in order to achieve the effective implementation of the principles and guidelines.

A. Awareness-raising and dissemination of the principles and guidelines

22. The responses received so far revealed that States had not yet developed comprehensive policies and action plans involving both government and non-government stakeholders to raise awareness about leprosy with a view to overcoming the stigma and discrimination towards persons affected by leprosy and their family members, including awareness-raising about and dissemination of the principles and guidelines. However, a number of States had taken several positive steps in that regard.

23. In terms of more systematic and coordinated awareness-raising about leprosy and dissemination of the principles and guidelines, the Government of Japan has played a prominent role. Key points of the principles and guidelines have been translated into Japanese and posted on the website of the Ministry of Foreign Affairs.[9] The human rights section of the Ministry of Justice has undertaken public awareness activities on the principles and guidelines in the form of parent-child symposiums on Hansen's disease, with the participation of students as panellists. The Ministry also distributed brochures on the principles and guidelines in Japanese, which had been prepared by the Centre for Human Rights Education and Training (a non-profit organization) and also posted on its website.[10] The Ministry of Health, Labour and Welfare organized various symposiums on leprosy and distributed brochures entitled "Hansen-byo no Mukogawa" (the other side of Hansen's disease) to schoolchildren, which provided facts about leprosy and information on the forcible isolation of persons affected by leprosy in the past. The Ministry of Education, Culture, Sports, Science and Technology called upon medical schools across Japan to provide accurate medical knowledge about leprosy. Several museums have been established and the 13 national sanatoriums in Japan also served as important centres of information on leprosy and reminders of the country's past experience of discriminatory practices against persons affected by leprosy and their family members. Zen-Ryo-Kyo, the National Hansen's Disease Sanatoria Residents' Association, considered that the Government of Japan had made efforts to raise as much awareness as possible on leprosy at both the national and local levels.[11]

24. Other States have also taken positive steps to raise awareness about leprosy and to disseminate the principles and guidelines, although those activities seemed to have been undertaken sporadically or to be limited to certain sectors of society. Such awareness-raising activities aimed at promoting non-discrimination against persons affected by leprosy

[8] Some of the responses received are not reflected in the present report, as they were not available in English.

[9] Responses from Japan and the Nippon Foundation.

[10] Ibid.

[11] Ibid and Zen-Ryo-Kyo.

have been undertaken through national leprosy programmes (or equivalent) run by Ministries of Health and by national human rights institutions and focused mainly on training health workers and providing education to local communities. The principles and guidelines have been disseminated in print form, through electronic media and in workshops and annual events, such as World Leprosy Day.[12]

25. Most of the activities to raise awareness and disseminate the principles and guidelines, including translation into local languages, had been undertaken by associations of persons affected by leprosy in their respective countries. However, it was pointed out that such awareness-raising activities, including the use of the principles and guidelines as a standard, were far from adequate or were limited to certain sectors of society. Many NGOs indicated that there were few or no visible policies or action plans prepared by their respective Governments to raise awareness specifically about leprosy or to disseminate the principles and guidelines, although there might be policies and strategies in place for promoting non-discrimination in general or towards specific groups — such as persons with disabilities — which might also apply to persons with disabilities who were also affected by leprosy.[13]

26. With respect to non-endemic countries or countries with few leprosy cases, although most of them were aware of the principles and guidelines, there was no practical necessity to take any particular action, mostly owing to the favourable epidemiological situation regarding leprosy in those countries.

B. Participation and consultation in decision-making processes

27. The responses received showed that some States had taken certain positive steps towards enabling persons affected by leprosy to consult on issues that affected them and to participate in decision-making processes on such issues.

28. In Japan, the Ministry of Health, Labour and Welfare held annual conferences on measures to be taken regarding Hansen's disease. At the conferences, persons affected by leprosy gave advice on issues that concerned them as well as suggestions on how to improve policies already in place. The Ministry took into account the outcomes of the discussions at the annual conferences when formulating other policies and laws.[14] The 2009 Act on Promoting the Resolution of Hansen's Disease Issues specifically states that the Government shall take the necessary measures to reflect the opinions of persons affected by Hansen's disease and other relevant persons in the formulation and implementation of measures concerning persons affected by leprosy as well as the establishment of forums for consultation.

29. In India, organizations of persons affected by leprosy had a strong voice and were invited by relevant government authorities to meetings concerning them at the district, state and national levels. Those organizations had influenced government policies and measures to a certain extent but still had a long way to go. Self-help groups had been formed, peer group discussions had been held and local communities decided on the support required by persons affected by leprosy. There was better participation of persons affected by leprosy in discussions on issues concerning them among organizations working in the field.[15]

30. In Brazil, MORHAN was a strong force at the national level. It often had a seat on the National Health Council and participated actively in national, state and municipal health conferences. The organization undertook evaluations every three years of government promises concerning the human rights and health care of persons affected by leprosy and had noted more openness on the part of the Government with regard to policy and

[12] Reponses from Saudi Arabia and from the national human rights institutions of Egypt, India, Rwanda, the United Republic of Tanzania and Viet Nam.

[13] Responses from GPDL (Indonesia), FOKAD (Democratic Republic of the Congo), FAIRMED Foundation (Sri Lanka), ENAPAL (Ethiopia), HANDA (China), Fontilles-Nicaragua and The Leprosy Mission-Myanmar.

[14] Responses from Japan, the Nippon Foundation and Zen-Ryo-Kyo.

[15] Responses from the National Human Rights Commission (India), Lepra Society-India and ILEP (India).

legislative matters. However, the political platform for consultation and participation at the national level was still not adequate.[16]

31. The majority of the responses from NGOs representing persons affected by leprosy indicated that, to date, there had been minimal or no consultation with and participation by persons affected by leprosy in the government decision-making process on issues concerning them. However, they themselves had formed self-help groups and were involved in local-level advocacy and projects that affected them.[17]

C. Civil and political rights

32. All of the responses received invariably indicated that the Constitutional provisions in the respective countries provided for the enjoyment of civil and political rights by all citizens without discrimination, including persons affected by leprosy and their family members. However, a significant number of responses, particularly from associations of persons affected by leprosy and international NGOs representing them in the respective countries, indicated that, in practice, the exercise of civil and political rights by persons affected by leprosy still left much to be desired and, in some cases, was curtailed by subsidiary laws.

33. In India, the right to stand for elections was curtailed under six municipal and Panchayati Raj (local) acts in the states of Rajasthan, Andhra Pradesh, Odisha, Chhattisgarh and Madhya Pradesh. This was corroborated by a decision passed by the Supreme Court of India in 2008, which upheld the decision of a lower court that had disqualified a person affected by leprosy from contesting civic elections or holding municipal office by citing discriminatory provisions against persons affected by leprosy in a 2005 Odisha Municipal Act.[18] Moreover, although persons affected by leprosy had legal rights to citizenship and to vote, in practice, it was not easy for those living in leprosy colonies to exercise those rights since most of them could not obtain a national identity card as proof of residence because they did not have rights to the land and houses they lived in.[19] A similar concern was pointed out in Myanmar, where a high proportion of persons affected by leprosy and with moderate or severe disabilities did not have national identity cards, which was an obstacle to their exercising their right to vote.[20]

34. Many of the responses from associations of persons affected by leprosy indicated that, although their civil and political rights were constitutionally guaranteed and some governments had formulated policies in that respect, the actual exercise of those rights by persons affected by leprosy was made difficult owing to the persistent stigma and discrimination existing in society, in particular against persons with visible deformities.[21] One case that stood out was of a man affected by leprosy in Brazil who was denied a voting card by the registration officer because he was illiterate and required the officer's assistance to affix his fingerprint.[22] Most of the NGOs underlined the need for Governments to take specific policy and legal measures to ensure the full enjoyment of civil and political rights by persons affected by leprosy.[23]

35. Brazil has a wide range of legislation to ensure the enjoyment of human rights by persons affected by leprosy. The independent Public Prosecutor's Office was often called upon in cases of violation of human rights against persons affected by leprosy. In many

[16] Responses from MORHAN (Brazil) and Netherlands Leprosy Relief-Brazil.

[17] Responses from FAIRMED Foundation (Sri Lanka), FOKAD (Democratic Republic of the Congo), HANDA (China), GPDL (Indonesia), Marcial Escobar (Paraguay), The Leprosy Mission-Myanmar, CORSOHANSEN (Colombia), FELAHANSEN (Colombia), The Leprosy Mission-Nepal, IDEA-Nepal, Lepra-Bangladesh and ENAPAL (Ethiopia).

[18] Response from The Leprosy Mission Trust (India).

[19] Ibid.

[20] Response from The Leprosy Mission-Myanmar.

[21] Responses from Lepra-Bangladesh, Netherlands Leprosy Relief-Mekong (Viet Nam), Netherlands Leprosy Relief-Brazil, MORHAN (Brazil), ILA (Paraguay), The Leprosy Mission-Bangladesh.

[22] Response from Netherlands Leprosy Relief-Brazil.

[23] Responses from HANDA (China), The Leprosy Mission-Bangladesh, GPDL (Indonesia), FOKAD (Democratic Republic of the Congo), Fontilles-Nicaragua and FELAHANSEN (Colombia).

states, MORHAN and members of the International Federation of Anti-Leprosy Associations (ILEP) had created partnerships with the Ministry of Justice to not only review individual cases of violation of rights of persons affected by leprosy, but also to ensure that public policies and laws relating to Hansen's disease were upheld by the Government.[24]

D. Economic, social and cultural rights

36. Most of the responses indicated that the enjoyment of economic, social and cultural rights by all citizens, including persons affected by leprosy and their family members, was provided for in the respective Constitutions, as well as in policies, guidelines and laws of some countries. However, many NGOs indicated that several core human rights were violated in practice. They cited specific cases of violations of the economic, social and cultural rights of persons affected by leprosy, such as the right to marriage and to found a family; the right to education; the right to work; the right to access public services; the right to adequate health care; and the right to participate in political, social and cultural life owing to the prevalent and institutionalized stigma and discrimination that existed in different sectors of society.

37. With regard to the right to found a family in Nepal, examples were given of two women who were forced to leave their homes and families after being diagnosed with leprosy.[25] One respondent from Nepal stated that he was forced to sign a divorce paper within four months of his marriage.[26] Several responses from other NGOs indicated that marriage and family break-ups occurred when either spouse, but particularly the woman, was diagnosed with leprosy.[27]

38. Discrimination at school, particularly against children whose parents have had leprosy was also cited as a problem by several NGOs.[28] In China, for example, a primary school had refused to accept 30 children, although they had provided medical certificates. The parents of some of those children were also against their enrolment because their own parents or grandparents had been affected by leprosy, but mainly because of fear of discrimination.[29] In India, a nursing student was recently discriminated against at college when she showed early symptoms of leprosy.[30] Some NGOs cited dismissal of workers on the grounds of having had leprosy.[31]

39. In the Democratic Republic of the Congo, persons affected by leprosy did not have the right to marry because it was believed that leprosy was transmissible and a curse from God. Moreover, persons affected by leprosy were not allowed to bathe in the same water as other healthy people and were considered an economic burden on their family because leprosy was considered to be an incurable disease.[32]

40. In India, persons affected by leprosy were still discriminated against in the health sector. Two cases were cited of hospitals in Delhi denying admission to persons affected by leprosy, which had led to the death of the patient in one case.[33] A case of rejection and mistreatment by a hospital of a person affected by leprosy was also mentioned in Indonesia.[34]

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[24] Responses from Netherlands Leprosy Relief-Brazil and MORHAN (Brazil).
[25] Response from The Leprosy Mission-Nepal.
[26] Response from Amar B. Timalsina (IDEA-Nepal).
[27] Responses from IDEA-India, FAIRMED Foundation (Sri Lanka) and The Leprosy Mission-Niger.
[28] Responses from The Leprosy Mission-Nepal, MORHAN (Brazil), The Leprosy Mission-Niger, GPDL (Indonesia), IDEA-India, HANDA (China) and CORSOHANSEN (Colombia).
[29] Response from HANDA (China).
[30] Response from IDEA-India.
[31] Responses from Netherlands Leprosy Relief-Brazil, FAIRMED Foundation (Sri Lanka), The Leprosy Mission-Nepal, IDEA-Nepal and The Leprosy Mission-Niger.
[32] Response from FOKAD (Democratic Republic of the Congo).
[33] Response from The Leprosy Mission Trust (India).
[34] Response from GPDL (Indonesia).

41. Several NGOs indicated that discrimination with respect to the economic, social and cultural rights of persons affected by leprosy and their family members was more pronounced in the case of persons with visible deformities.[35]

42. In India, laws have been enacted to ensure that the rights of persons with disabilities also applied to some categories of persons affected by leprosy, but it was difficult to exercise those rights because of the scope and limitations of the benefits.[36]

43. Most of the NGOs indicated that there was an overall lack of measures by Governments to address the economic, social and cultural rights of persons affected by leprosy and their family members. They stressed the importance of issuing policies and laws that addressed the specific needs of persons affected by leprosy so as to ensure the exercise of their rights in that respect. They also indicated that a host of attitudinal and structural barriers persisted in society alongside the silent acceptance of age-old norms and practices of segregation and exclusion.[37]

E. Women, children and other vulnerable groups

44. With respect to promotion and protection of the human rights of women, children and other vulnerable groups of persons affected by leprosy and their family members, almost all of the responses indicated that the relevant national legal instruments were consistent with State obligations under the relevant core human rights treaties to which they were parties and barred discrimination against such groups.

45. Several responses mentioned positive steps taken in relation to women, children and other vulnerable groups of persons affected by leprosy. In Japan, the Legal Affairs Bureau of the Ministry of Justice and its branches at the district level annually conducted various awareness-raising activities on the human rights issues faced by women, children and the elderly affected by leprosy and their family members under different themes, such as "Protect Women's Rights", "Protect Children's Rights" and "Nurture a High Regard for Elderly People". They also offered counselling services on human rights, including for women, children and other vulnerable groups affected by leprosy and their family members, investigated suspected human rights violations concerning those groups and took appropriate measures.[38] The 2009 Act on Promoting the Resolution of Hansen's Disease Issues covers women, children, the elderly and other vulnerable groups and its full implementation would ensure non-discrimination against and promotion and protection of the human rights of those groups.[39]

46. In Rwanda, persons with disabilities, including those affected by leprosy, could submit applications for all employment vacancies without discrimination. Non-discrimination in schools against children from families of persons affected by leprosy was ensured and adults affected by leprosy could also benefit from adult literacy programmes on an equal basis with other adults.[40]

47. In India, a new bill on disability containing recommendations on the reintegration of women and children with disabilities was pending before Parliament. If passed, it would go a long way in protecting the rights of women and children affected by leprosy. In addition, the proposed bill that had been recommended by the Law Commission of India would afford full protection of the rights of women, children and other vulnerable groups if implemented by the Government.[41] The National Human Rights Commission, in partnership with Sasakawa India Leprosy Foundation, organized the Young Partners

[35] Responses from IDEA-India, Lepra-Bangladesh, The Leprosy Mission-Nepal and Fontilles-Nicaragua.

[36] Response from The Leprosy Mission Trust (India).

[37] Responses from CORSOHANSEN (Colombia), FELAHANSEN (Colombia), The Leprosy Mission International-Bangladesh, Lepra-Bangladesh, The Leprosy Mission-Nepal, The Leprosy Mission-Niger, The Leprosy Mission Trust (India), IDEA-India, FOKAD (Democratic Republic of the Congo) and FAIRMED Foundation (Sri Lanka).

[38] Response from Japan.

[39] Response from the Nippon Foundation.

[40] Response from the National Human Rights Commission (Rwanda).

[41] Response from The Leprosy Mission Trust (India).

Programme to sensitize schoolchildren to leprosy with a view to stopping the stigma and discrimination faced by persons affected by leprosy and their family members.[42] The National Human Rights Commission had also conducted workshops on the topic of discrimination against persons affected by leprosy and their family members and submitted several recommendations to the Government, including on the implementation of the principles and guidelines. It was still awaiting action by the Government.[43]

48. Most of the responses from associations of and NGOs working with persons affected by leprosy underlined that, even where policies and laws, including laws for persons with disabilities that were applicable to women, children and other vulnerable groups, had been adopted, they had not always been effectively implemented, which was evidence that stigma and discrimination against women, children and other vulnerable groups affected by leprosy still prevailed. The same applied to measures taken by Governments in that respect. The importance of the need for Governments to take specific policy and legal measures to promote and protect the human rights of women, children and other vulnerable groups affected by leprosy and their family members was underlined.[44]

F. Discriminatory policies and laws

49. The responses indicated that some States had taken positive steps in repealing or amending laws that discriminated against persons affected by leprosy and their family members, including laws that provided for forced segregation and isolation of persons affected by leprosy and their family members.[45]

50. In Japan, the revised 1953 Leprosy Prevention Law was repealed in 1996, thereby putting an end to the policy of isolation and segregation of persons affected by leprosy and their family members, who have since had the freedom to choose where to live. In 2001, the Government issued a law to compensate persons who had been interned in leprosariums. The Act on Promoting the Resolution of Hansen's Disease Issues came into force in 2009. It obliges the central and local governments to implement measures for the promotion of the welfare and restoration of honour, among others, of persons affected by leprosy in order to realize a society free from discrimination, including against women, children and other vulnerable groups. The 2009 Act also provides that no person shall act in a manner that discriminates against or infringes on any rights or interests of persons affected by leprosy. Full implementation of the 2009 Act would be tantamount to the implementation of the principles and guidelines.

51. In Brazil, the last discriminatory law against persons affected by Hansen's disease was repealed in the 1990s. In 2007, a bill was passed by Parliament to provide financial support and compensation to persons affected by Hansen's disease who were living in leprosy colonies, including a lifetime public pension and access to quality leprosy-related services at all levels. Legislation to provide similar support to children who had been forcibly separated from their parents at birth in the leprosy colonies was currently under consideration. It was mentioned that 2 states in Brazil had transferred property to Hansen's disease patients, making them owners of property within the leprosy colonies and that, in another state, discussion was under way to that effect. However, that state had recently demolished public buildings and was considering relocating people from the leprosy colony to a farther region.[46]

52. Bangladesh enacted a law in 2011 repealing the Lepers Act of 1898, which isolated persons affected by leprosy from society and from their own families.[47] China repealed a law in 2011, which prohibited persons affected by leprosy from marrying; and Ethiopia

[42] Response from the National Human Rights Commission (India).
[43] Response from IDEA-India.
[44] Responses from IDEA-Nepal, FOKAD (Democratic Republic of the Congo), ENAPAL (Ethiopia), HANDA (China), IDEA-India, The Leprosy Mission Trust (India), The Leprosy Mission-Bangladesh, MORHAN (Brazil), Fontilles-India, The Leprosy Mission-Nepal, Netherlands Leprosy Relief-Mekong (Viet Nam).
[45] Responses from Japan, Viet Nam and the National Human Rights Commission (Rwanda).
[46] Responses from MORHAN (Brazil) and Netherlands Leprosy Relief-Brazil.
[47] Response from Lepra-Bangladesh.

repealed a provision in the Family Act, which previously allowed the dissolution of marriage on the ground of leprosy.[48] In Rwanda, the National Human Rights Commission participated in the review of laws tabled in Parliament to ensure that no law was passed that violated the human rights of citizens, including persons affected by leprosy and their family members.[49] In 2015, organizations of persons affected by leprosy in Nepal and other NGOs working closely with persons affected by leprosy successfully lobbied Parliament not to pass a piece of legislation that would have allowed the spouse of a person affected by leprosy to claim divorce.[50]

53. In India, one of the serious gaps mentioned by both the National Human Rights Commission and all the NGOs operating in the country was the existence of several discriminatory laws against persons affected by leprosy and their family members.[51] In that respect, reference was made to a very important step that was taken recently by the Law Commission of India, a recommendatory body to the Government of India on laws. The Law Commission issued a comprehensive report entitled "Eliminating Discrimination Against Persons Affected by Leprosy" in April 2015, which identified several discriminatory laws against persons affected by leprosy and their family members and called for such laws to be either repealed or amended by the Government or its constituent state governments.[52] Apart from the Leprosy Act, which provided for the segregation of persons affected by leprosy and their family members from the general community, several laws provided that leprosy was a legitimate ground for divorce or separation. Under the Beggary Acts of various states, among others, persons affected by leprosy were classified under the same category as persons suffering from lunacy. In general, it was pointed out that around 16 discriminatory laws against persons affected by leprosy and their family members were still in effect in India. In addition, in its report, the Law Commission included a model draft legislation entitled "Eliminating Discrimination Against Persons Affected by Leprosy", and proposed that the Government of India approve it. According to information provided in the responses, the Law Commission's report was submitted to Parliament and was awaiting adoption by the Government. The Lepers Act of 1898, among others, was repealed by the national Parliament in 2016.[53] However, it remained to be seen whether the Government would take measures to repeal or amend other discriminatory laws. Moreover, all respondents believed that if the recommendation made by the Law Commission was approved by the Government of India and implemented effectively, it would be equivalent to implementation of the principles and guidelines since, in most respects, the provisions in the bill were in line with the principles and guidelines.

54. Although India was cited as being a country that still retained several discriminatory laws regarding persons affected by leprosy and their family members, a recent study by ILEP revealed that several countries still had discriminatory laws in effect which had not yet been repealed.[54]

55. WHO launched a global leprosy strategy in April 2016, calling for action by national leprosy programmes to eliminate discrimination against persons affected by leprosy and their family members. "Zero countries with legislation allowing discrimination on the basis of leprosy" is one of the targets to be achieved by 2020.[55]

56. Most of the responses from associations of persons affected by leprosy and NGOs working with them also indicated that, although the policies and laws in their respective countries allowed persons affected by leprosy and their family members to freely choose where to live, a host of attitudinal and structural stigma and discrimination prevailed in the societies in which they lived, and the fear of being discriminated against was a significant

[48] Response from HANDA (China) and ENAPAL (Ethiopia).

[49] Response from the National Human Rights Commission (Rwanda).

[50] Response from IDEA-Nepal and The Leprosy Mission-Nepal.

[51] Response from the National Human Rights Commission (India), The Leprosy Mission Trust (India), IDEA-India, Fontilles-India, Leprosy Society-India.

[52] See Law Commission of India, "Eliminating Discrimination Against Persons Affected by Leprosy", Report No. 256 (April 2015), available at http//lawcommissionofindia.nic.in/reports/Report256.pdf.

[53] See India, The Repealing and Amending Act No. 23 of 2016. Available at http://lawmin.nic.in/ld/Act23of2016RepealingandAmending.pdf.

[54] See www.reuters.com/article/us-health-discrimination-leprosy-idUSKBN0KV27T20150122.

[55] See WHO, *Global Leprosy Strategy 2016-2020: Accelerating towards a leprosy-free world* (2016).

obstacle to the reintegration into society of persons affected by leprosy and their family members.

G. Follow-up and monitoring the implementation of the principles and guidelines

1. At the national level

57. All the responses indicated that no country had a national committee to coordinate activities relating to persons affected by leprosy and no country had formulated a comprehensive set of policies and measures in the form of national action plans, as recommended by the principles and guidelines, as a basis for following up their implementation. However, some respondents noted that, despite the absence of a specific national action plan or committee established at the national level, policies and laws had been adopted in their respective countries and, if fully implemented, they would be equivalent to partial or meaningful implementation of the principles and guidelines.[56]

58. Almost all of the responses from associations of persons affected by leprosy and NGOs working with them as well as some of national human rights institutions underlined the need for Governments to develop specific measures to implement the principles and guidelines, in particular in the form of a time-bound national action plan, and to designate broad-based stakeholder committees from the national to the community level.[57] That could then form the basis for follow-up and reporting to a designated government body on the steps taken towards the implementation of the principles and guidelines. The responses received also underlined that persons affected by leprosy and their family members, either as individuals or through their associations or NGOs and civil society organizations working closely with them, should be actively involved and consulted at all levels and stages of the decision-making process in order for the Government and other stakeholders to adequately address the prevalent stigma and discrimination that persons affected by leprosy and their family members faced and to follow up and report on the implementation of the principles and guidelines.

59. Most of the responses also indicated that there should be a designated body within the Government to coordinate the national action plan for the implementation of the principles and guidelines and highlighted Ministries of Health and national human rights institutions, in particular, in their respective countries that were already engaged or should be engaged directly or indirectly in promoting the human rights of and combating stigma and discrimination against persons affected by leprosy and their family members.

60. Many of the responses mentioned some of the priority measures that their respective Governments should take towards implementing the principles and guidelines, including promoting awareness-raising and dissemination of the principles and guidelines, repealing discriminatory laws, promoting social integration and rehabilitation of persons affected by leprosy and their family members, using appropriate and dignified language and empowering persons affected by leprosy and their family members.

(a) Promoting awareness-raising and dissemination of the principles and guidelines

61. Governments should strengthen their efforts to raise awareness about leprosy and widely disseminate the principles and guidelines throughout their respective countries, including providing information about the disease, treatment, discrimination and stigma faced by persons affected by leprosy and their family members, with their active participation and in collaboration with stakeholders within the Government and within society, such as religious leaders, human rights bodies, the media, opinion makers, among others. In that regard, the principles and guidelines should be mainstreamed in school curricula and the media should be co-opted to play an active role in eliminating discriminatory attitudes towards persons affected by leprosy and their family members and to give wider coverage to advocacy programmes.

[56] Responses from Japan, Rwanda and Viet Nam.

[57] Responses from Egypt, Rwanda and the United Republic of Tanzania.

(b) Repealing discriminatory laws

62. States should take appropriate measures to repeal discriminatory laws and to formulate and implement affirmative policies and laws that ensure the protection of the human rights and dignity of persons affected by leprosy and their family members in accordance with the principles and guidelines. Discriminatory policies and laws have reinforced the prevailing discrimination against persons affected by leprosy and their family members in all spheres of social life, in particular in the areas of education, employment and marriage.

(c) Promoting social integration and rehabilitation

63. Concerted efforts should be made to reintegrate and rehabilitate persons affected by leprosy and their family members through the promotion of programmes for those living in isolation. In that respect, support for the rehabilitation of persons affected by leprosy and their family members and provision of education for children of persons affected by leprosy was emphasized.

(d) Using appropriate and dignified language

64. The age-old misconceptions about leprosy have been reinforced by the ongoing use of inappropriate and often denigrating language to refer to persons affected by leprosy and their family members in both leprosy-endemic and non-endemic countries. The use of the term "leper" and its equivalent in other languages contributes to the ongoing discrimination faced by persons affected by leprosy and their family members. States and social groups, including the media, should use appropriate terminology when referring to the disease and persons affected by it so as to highlight the human dignity of and foster respect for persons affected by leprosy and their family members. For example, persons affected by leprosy or persons affected by Hansen's disease were considered as more appropriate expressions.

(e) Empowering persons affected by leprosy and their family members

65. One cross-cutting priority that was highlighted was that persons affected by leprosy and their family members should be considered as primary stakeholders in combating the disease and the stigma and discrimination they are faced with, and should be involved in the formulation and implementation of policies and other measures taken by States, which directly or indirectly affected their lives. That would be a crucial step towards recognizing their fundamental human rights and affirming their dignity as well as eliminating the persisting stigma and discrimination, in accordance with the principles and guidelines.

2. At the international level

66. Most of the responses received highlighted the lack of a specific mechanism at the international level to follow up and monitor the implementation of the principles and guidelines by States and other concerned stakeholders. It was suggested that an appropriate body be established within the existing international human rights system to follow up and monitoring the implementation of the principles and guidelines by States. The appropriate mechanism for following up and monitoring the implementation of the principles and guidelines should be under the auspices of the Human Rights Council, which had initiated and adopted the principles and guidelines, leading to their adoption by the General Assembly in 2010.

IV. Conclusion and recommendations

67. **The principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members, which were adopted by the General Assembly in its resolution 65/215 in December 2010 upon the recommendation of the Human Rights Council, have constituted a milestone document aimed at affirming the human dignity and rights of persons affected by leprosy and their family members. However, although some States have taken steps towards their implementation, much still remains to be done by both States and other relevant stakeholders to ensure their full implementation and to eliminate the discrimination, stigma and ostracization faced by persons affected by leprosy and**

their family members. The efforts made to date have often been fragmented and limited to certain government sectors, such as Ministries of Health or national human rights institutions, and not taken up in a holistic or coordinated manner that involve other actors in society, including persons affected by leprosy and their family members. Indeed, owing to a lack of effective and concerted State and societal action to implement the principles and guidelines, various forms of discrimination that impede the enjoyment of their fundamental human rights by persons affected by leprosy and their family members persist in many parts of the world.

68. Although there is a certain degree of awareness of the principles and guidelines in many countries, such awareness does not seem to be sufficiently disseminated within all sectors of government at all levels or among the population at large. The principles and guidelines are also not being used as an authority for combating stigma and discrimination against persons affected by leprosy and their family members.

69. In the majority of countries, there is no comprehensive strategy or action plan or policy framework as well as a designated body to follow up, monitor and report on the measures taken to implement the principles and guidelines. However, in some countries, one or more government institutions, such as the Ministry of Health or the national human rights institution, have taken fragmented actions to follow up the implementation of some aspects of the principles and guidelines. Moreover, full and meaningful participation of persons affected by leprosy and their family members at all levels of the decision-making process and in activities on matters that directly or indirectly impact their lives, including in following up the effective implementation of the principles and guidelines, seems to be lacking in most countries.

70. Although no specific discriminatory policies and laws were pinpointed, such policies and laws still exist in many countries and they should be reviewed and modified or repealed as necessary. Such policies and laws are not limited to leprosy-endemic countries, but also exist in non-endemic countries where leprosy is considered very rare and a "forgotten" disease. Affirmative policies and laws that provide specifically for measures to eliminate stigma and discrimination against persons affected by leprosy and their family members and that promote social inclusion of such persons in line with the principles and guidelines are lacking in most countries.

71. Inappropriate and offensive language is still used to refer to persons affected by leprosy in both leprosy-endemic and non-endemic countries. This is sometimes perpetuated by the media and in popular culture in some countries.

72. At the international level, there is a clear absence of a specific mechanism within the human rights machinery to follow up, monitor and report on measures taken and progress made towards the effective implementation of the principles and guidelines. The importance of establishing such a mechanism at the international level, preferably within the human rights system, to follow up, monitor and report on measures taken by States towards the effective and full implementation of the principles and guidelines was highlighted.

73. Based on the above findings, the following recommendations are proposed for the wider dissemination and effective implementation of the principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members.

A. At the national level

74. States and relevant government institutions at all levels should strengthen, promote and facilitate awareness-raising campaigns and widely disseminate the principles and guidelines as the main benchmark in the fight to eliminate stigma and discrimination against persons affected by leprosy and their family members. This should be done in collaboration with all relevant actors, such as organizations representing persons affected by leprosy and their family members, medical practitioners, educators, religious and community leaders, public figures, opinion makers and the media. In that respect, sustained and proactive public education and awareness campaigns should be conducted in order to dispel persisting myths and superstitions about leprosy, including in countries where leprosy is not a prominent

issue. Mainstreaming leprosy in school curricula and providing information in the media about advances in the treatment of leprosy and that fact that leprosy is not easily transmissible nor infectious once treated is also important.

75. States should review and identify national policies, laws and practices that may engender stigma and discrimination against persons affected by leprosy and their family members and amend or repeal such discriminatory policies and laws. States should also consider developing policies and laws that prohibit any acts aimed at discriminating against or isolating or excluding persons affected by leprosy and their family members, in line with the principles and guidelines.

76. States should designate an appropriate body and establish a national committee comprising all relevant stakeholders, including persons affected by leprosy and their family members, to follow up and monitor the implementation of the principles and guidelines. An existing institution such as the national human rights institution, whose mandate is principally to ensure the promotion and protection of human rights of all persons within its jurisdiction, or the Ministry of Health that conducts the national leprosy programme may be considered as viable options to coordinate, follow up and monitor the actions and measures taken by government entities at all levels.

77. States should ensure and support the full and meaningful participation of persons affected by leprosy and their family members, including women, children and other vulnerable groups, at all levels of the decision-making process on matters that have a direct or indirect impact on all aspects of their lives. That would send a powerful message that their human dignity and rights are recognized on an equal basis with others and would contribute to eliminating the social stigma attached to leprosy. The slogan "Nothing for us, without us" should be respected by all States concerned.

78. States should ensure that appropriate and respectful language is used by all segments of society to refer to persons affected by leprosy, or Hansen's disease, and their family members. In particular, the use of the term "leper" or its equivalent in other languages should be avoided at all costs, as it connotes marginalization and rejection by society and also discourages those affected from seeking treatment in a timely manner.

B. At the international level

79. Discrimination against persons affected by leprosy and their family members continues to exist in various forms in many countries. The principles and guidelines for the elimination of discrimination against persons affected by leprosy confirm and build upon the core principle of non-discrimination enshrined in international human rights law and constitute a benchmark for upholding the human rights of persons affected by leprosy and their family members. They represent the standard to be upheld by States in assuming their responsibility to prohibit all forms of discrimination against persons affected by leprosy and their family members. The centrality of the principles of equality and non-discrimination in international human rights law and the adoption of the principles and guidelines by the United Nations human rights machinery and the General Assembly make them authoritative standards against which to measure States' responsibility towards persons affected by leprosy and their family members.

80. Owing to the multiple forms of discrimination and violation of the human rights of persons affected by leprosy and their family members and in order to address their specific needs in terms of access to health care, education, employment and reintegration and rehabilitation into society in a holistic manner, it is recommended that a specific mechanism be established within the United Nations human rights system to address the issue and to encourage States and other relevant actors to implement the principles and guidelines. The mechanism should also be mandated to follow up, monitor and report on measures taken and progress made by States towards the effective implementation of the principles and guidelines.

81. Although existing special procedures address many aspects of the human rights of various groups, none addresses the human rights issues concerning persons affected

by leprosy and their family members. It is therefore highly recommended that a special procedure be created under the auspices of the Human Rights Council to examine the human rights situation of persons affected by leprosy and their family members and to follow up, monitor and report on measures taken and progress made by States in the effective implementation of the principles and guidelines.

82. **In conjunction with the proposed creation of a special procedure mandate, awareness-raising activities should be continued within the United Nations human rights forums in order to promote the wide dissemination and to deepen the understanding of the principles and guidelines in States and all relevant stakeholders with a view to creating a conducive environment in which a special procedure mandate holder could play a pivotal role towards the effective implementation of the principles and guidelines. In that respect, it is recommended that the Human Rights Council encourage OHCHR, in cooperation with States, relevant international organizations such as WHO as well as concerned NGOs, to organize seminars, conferences and side events on leprosy and leprosy-related discrimination and ensure substantial active participation by persons affected by leprosy and their family members.**

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Report of the Special Rapporteur on the situation of human rights in Eritrea*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Eritrea, which was prepared pursuant to Council resolution 32/24. In that resolution, the Council extended the mandate of the Special Rapporteur for one year and requested that she follow up on the implementation of the recommendations of the commission of inquiry on human rights in Eritrea contained in its report dated 9 May 2016 (see A/HRC/32/47).

In her report, the Special Rapporteur provides information about her activities, notes relevant regional developments, including with regard to the situation of Eritreans fleeing their home country and the engagement of Eritrea with the international community.

The Special Rapporteur notes that the Government of Eritrea has made no effort to address the human rights concerns highlighted by the commission of inquiry and that it has shown no willingness to tackle impunity for past and ongoing violations.

Finally, the Special Rapporteur sets out the steps required to put an end to the continuing human rights violations and impunity and to hold perpetrators of international crimes accountable.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in Eritrea

Contents

		Page
I.	Introduction	3
II.	Activities	3
III.	Regional developments	4
IV.	Update on the human rights situation	5
V.	Eritrean refugees	7
VI.	Engagement of Eritrea with external actors on human rights	11
	A. Scrutiny by international and regional human rights mechanisms	11
	B. Assistance by the international community	12
	C. Lack of progress	13
VII.	Human rights in Eritrea: the way forward	13
	A. Improvement of the human rights situation	14
	B. Accountability for past violations	15
VIII.	Conclusions and recommendations	17
	A. Conclusions	17
	B. Recommendations	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 32/24, by which the Council extended the mandate of the Special Rapporteur on the situation of human rights in Eritrea for one year and requested that the mandate holder follow up on the implementation of the recommendations of the commission of inquiry on human rights in Eritrea in its report dated 9 May 2016 (see A/HRC/32/47). In the present report, the Special Rapporteur provides information about her activities since the extension of the mandate, notes relevant regional developments and discusses the Government's interaction with human rights mechanisms. She then provides an overview of the current human rights situation, based on information that was brought to her attention during the reporting period, including on the situation of Eritreans fleeing their home country and the engagement of Eritrea with the international community. Finally, the Special Rapporteur presents her vision for improving the human rights situation by setting out the steps required to put an end to the continuing human rights violations and impunity and to hold perpetrators of international crimes accountable.

II. Activities

2. Since the mandate was extended in June 2016, the Special Rapporteur has engaged in consultations in Switzerland (September 2016), Belgium (September 2016) and Ethiopia (November 2016). In March 2017, she undertook missions to Sweden, Germany, the United Kingdom of Great Britain and Northern Ireland, the Netherlands and France. She visited Norway in May 2017.

3. In her discussions, she has focused on following up on the findings and recommendations of the commission of inquiry on human rights in Eritrea. Together with representatives of Member States, United Nations entities, the European Union and the African Union, with prosecutors, investigators and representatives of ministries of justice, as well as with human rights defenders, representatives of civil society organizations and individual Eritreans, the Special Rapporteur has explored ways to take forward the work of the commission of inquiry. Discussions were held on the current human rights situation in Eritrea, on regional and bilateral engagement and on the options for holding perpetrators of crimes against humanity to account.

4. In March 2017, the Special Rapporteur briefed the European network of contact points in respect of persons responsible for genocide and crimes against humanity and war crimes about the findings and recommendations of the commission of inquiry. She specifically explained that there was reason to believe that crimes against humanity had been and continued to be committed in Eritrea.

5. The Special Rapporteur attended two meetings on human rights held under the auspices of the African Union, namely the symposium on the tenth anniversary of the African Court on Human and Peoples' Rights and the Fifth Annual High-level Dialogue on Democracy, Human Rights and Governance, both held in Arusha, United Republic of Tanzania, in November 2016. She also attended the Sixtieth Ordinary Session of the African Commission on Human and Peoples' Rights and, before that, the forum on the participation of non-governmental organizations (NGOs) in that session, both held in Niamey in May 2017. During the NGO forum, the Special Rapporteur participated in a panel on justice and human rights in the context of threats to peace and security in Africa, as well as in a side event on accountability for grave human rights violations in Eritrea that explored the role of regional mechanisms in that regard. The Special Rapporteur took the opportunity to brief the African Commission and several of its special mechanisms on the findings and recommendations of the commission of inquiry and on the human rights situation in Eritrea.

6. Also in May 2017, the Special Rapporteur was invited by the Department of Politics and International Relations of the University of Johannesburg, South Africa, to an event on the human rights situation in Eritrea. Following her presentation, a panel explored avenues

for pursuing accountability at both the international and national levels, as part of the broader effort to fight impunity.

7. The Special Rapporteur attended the 2017 Oslo Freedom Forum, where she participated in a panel entitled "Never again: why we fail to stop crimes against humanity". During her presentation, she spoke of the work of the commission of inquiry, laid out the different avenues for pursuing accountability for the crimes identified in the report of the commission of inquiry and discussed options for holding perpetrators of crimes against humanity accountable.

8. Throughout the reporting period, the Special Rapporteur sought to cooperate with the Government of Eritrea. She reiterated her request to visit the country and repeatedly solicited meetings with government representatives in Addis Ababa, Brussels, Geneva and New York. The Special Rapporteur regrets that, despite these efforts, the Government of Eritrea refused to cooperate with the mandate holder for a fifth consecutive year. The Special Rapporteur remains committed to cooperating with Eritrea to discuss her own findings and those of the commission of inquiry, as well as ways for the country to respect, protect and fulfil its human rights obligations.

III. Regional developments

9. Eritrea and its immediate neighbours have had troubled relations over borders, some of which persist to this day, creating what has been described by the Government as a "no war, no peace" situation that justifies the country's high level of militarization. In addition, the "no war, no peace" situation affects how Eritrea interacts with the international community and how it addresses its internal affairs, and has a very negative impact on the enjoyment of human rights by Eritreans. The continued non-implementation of the 2002 decision of the Eritrea-Ethiopia Boundary Commission on border demarcation, which resulted in the village of Badme being allocated to Eritrea, is of particular concern.[1] The Special Rapporteur reiterates that the ongoing Ethiopian occupation of Badme is against international law and supports calls for the full implementation of the provisions of the decision (see A/HRC/32/47, para. 134 (b)).[2] However, the failure to implement the Boundary Commission's decision cannot serve as justification for the open-ended and arbitrary nature of Eritrean military/national service programmes, nor can the illegal occupation of the village justify the human rights violations and crimes against humanity documented by the Special Rapporteur and the commission of inquiry.

10. In 2009, the Security Council imposed an arms embargo on Eritrea, primarily in response to the country's suspected support for Al-Shabaab in Somalia. In its most recent report, the Monitoring Group on Somalia and Eritrea stated that it had found no firm evidence of Eritrean support for Al-Shabaab. It also described the use of Eritrean land, airspace and territorial waters by the Arab coalition supporting the anti-Houthi military campaign in Yemen, as well as the construction of a permanent military base at Assab International Airport and a new permanent seaport adjacent to it (see S/2016/920). In November 2016, the Security Council noted the finding about the lack of evidence pointing to Eritrean support for Al-Shabaab, but expressed concern about ongoing Eritrean support for other regional armed groups and lack of cooperation with the Security Council. It extended the arms embargo on Eritrea (see resolution 2317 (2016)).

11. In October 2016, a helicopter gunship reportedly hit a boat carrying Eritrean Afar fishermen travelling along the Eritrean coast near Edi and Bara-Assoli, killing one person and injuring seven others.

12. In February 2017, the Panel of Experts established pursuant to Security Council resolution 1874 (2009) accused Eritrea of violating the arms embargo by buying military

[1] United Nations, *Reports of International Arbitral Awards*, vol. XXV, pp. 83-195.

[2] See also the declaration by the High Representative of the European Union for Foreign Affairs and Security Policy dated 13 April 2017, available from www.consilium.europa.eu/en/press/press-releases/2017/04/13-declaration-hr-eritrea-ethiopis-boundary-commission.

communications materiel from the Democratic People's Republic of Korea (see S/2017/150, para. 72). On 21 March 2017, the United States of America imposed sanctions pursuant to the Iran, North Korea and Syria Non-Proliferation Act on the Eritrean Navy and any successor, sub-unit or subsidiary thereof for prohibited transfer to or acquisition from the Democratic People's Republic of Korea of goods, services or technology included in multilateral control lists.[3]

13. In October 2016, a Canadian court ruled that a lawsuit against Nevsun Resources Ltd., a Canadian mining company, by several Eritreans claiming that they had been forced to work at the Bisha mine, could proceed in British Columbia, Canada. However, the court found that the case could not continue as a representative action, so the six workers would each have to file separate lawsuits.[4] The plaintiffs and Nevsun have both appealed the decision.

IV. Update on the human rights situation

14. During the reporting period, the Special Rapporteur received information indicating that the military/national service programmes of Eritrea continued to be arbitrary, extended and involuntary in nature, amounting to enslavement, in line with the findings of the commission of inquiry.

15. Several interlocutors highlighted that forced recruitment into the military/national service also continued.

16. The Special Rapporteur received reports that the Government had increased the stipends paid to national service conscripts. While this would be a positive and much-needed development, it is not sufficient to counter the other factors that render the military/national service programmes tantamount to enslavement. In any event, there are serious doubts as to whether the Government really has increased the stipends given that it also imposes deductions for various purposes such as taxes, logistics and construction. The Special Rapporteur is not in a position to verify the information but strongly urges the Government to enhance transparency with respect to the handling of administrative matters, especially those that have a significant impact on the majority of the population.

17. The Special Rapporteur notes reports about the death in detention of Tsehaye Tesfamariam, a Jehovah's Witness, who died in Asmara on 30 November 2016 after having been imprisoned at the Me'eter camp since January 2009.[5] She recalls the findings of the commission of inquiry with respect to the mistreatment of religious minorities in Eritrea, including Jehovah's Witnesses.

18. During the reporting period, the Special Rapporteur continued to receive reports of new cases of arbitrary arrest and detention. The reasons for the arrests appear to be those previously identified by the commission of inquiry, namely: attempting to evade military service or trying to assist a family member in doing so; trying to leave the country; practicing an unauthorized religion; and offending a high-ranking government official or an official of the People's Front for Democracy and Justice, the sole political party in the country. The Special Rapporteur has received no official communication indicating that the Government has released arbitrarily detained prisoners or that it has provided information about the fate of high-profile individuals subjected to enforced disappearance.

19. In June 2014, the Special Rapporteur sent a communication to the Government of Eritrea about the former Ambassador of Eritrea to Nigeria, Mohamed Ali Omaro, jointly with the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special

[3] See the notice by the State Department dated 30 March 2017, available from https://www.federalregister.gov/documents/2017/03/30/2017-06225/imposition-of-nonproliferation-measures-against-foreign-persons-including-a-ban-on-us-government.

[4] Canada, British Columbia Supreme Court, *Araya v. Nevsun Resources Ltd.*

[5] See https://www.jw.org/en/news/legal/by-region/eritrea/eritrean-witness-dies-20170130/.

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The mandate holders noted the reported arrest in April 2014 in Asmara of Mr. Omaro, who was believed to have been held incommunicado, without charge or trial. They expressed concern about his well-being given that he was alleged to have been detained incommunicado for a long period, as well as about the risk of him being subjected to torture or other forms of ill-treatment.

20. The Special Rapporteur regrets that more than two years have passed and the Government has still not responded to the allegations. According to information received from other sources, Mr. Omaro is being detained in Karshele, in Asmara, and his state of health is deteriorating. The Special Rapporteur is very concerned about his well-being and urges the Government to provide information about the situation of Mr. Omaro. The claim that he is under arrest because of "national security" is untenable and not sufficient to hold him incommunicado and without being charged before an independent court of law.

21. It appears that individuals continue to be arbitrarily arrested and detained for their religious beliefs. In August 2016, the Patriarch of the Orthodox Church, Abune Antonios, reportedly refused to apologize to the President for having called for the release of three imprisoned Orthodox priests and failing to excommunicate church members, an incident that had already led to his removal and to his incommunicado detention for more than 10 years. The Special Rapporteur was also informed about the arrest of eight Christians during a raid by military police on a gathering close to Asmara in August 2016; the detainees, including a young child, are reportedly being held in Mai Serwa. According to the Special Rapporteur's sources, members of unregistered religious denominations[6] were rounded up in May 2017. Several Christians were arrested during a prayer meeting in Ghinda and picked up from their homes in Adi Quala. A Jehovah's Witness was released from prison on 5 October 2016, after having been arrested in April 2016 for attending a religious ceremony.[7]

22. The Special Rapporteur also received reports of people being arrested for allegedly trying to avoid military service or for assisting others, namely their own children, to do so.

23. According to reports received by the Special Rapporteur, the use of torture by Eritrean officials in civilian and military detention centres continued during the reporting period. In a report published early in 2017, Médecins sans frontières stated that its doctors in neighbouring countries had observed and treated patients from Eritrea with wounds, scars and other signs of physical and psychological trauma consistent with their description of torture.[8]

24. According to the Food and Agriculture Organization of the United Nations (FAO), the main harvest season started in Eritrea early in November 2016 and was expected to end at the beginning of 2017. Based on remote sensing analysis, production prospects in the main agricultural regions of Debub, Maekel, Gash Barka and Anseba were favourable, with the 2016 rains having started in a timely manner and with precipitation patterns characterized as above average and well-distributed over most crop-growing areas. However, below-average vegetation conditions, mostly affecting pasture land, were reported in northern coastal areas, where the rains ended earlier than expected, at the end of August. That said, the rains that normally fall between December and March, started early, in November, and were expected to bring some relief in terms of improving the conditions of pasture land and increasing water availability.[9]

25. Despite that assessment, FAO kept Eritrea on the list of 37 countries requiring external assistance for food, mainly owing to economic constraints having increased the population's vulnerability to food insecurity.[10]

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[6] Only four religious denominations are recognized, namely, Eritrean Orthodox, Roman Catholic, Evangelical Lutheran and Sunni Islam.

[7] See https://www.jw.org/en/news/legal/by-region/eritrea/jehovahs-witnesses-in-prison/.

[8] Médecins sans frontières, *Dying to Reach Europe: Eritreans in Search of Safety* (2017), p. 11.

[9] See www.fao.org/giews/countrybrief/country.jsp?code=ERI.

[10] See www.fao.org/giews/country-analysis/external-assistance/en/.

26. At the beginning of the year, the United Nations Children's Fund (UNICEF) raised concerns about the impact of drought conditions caused by El Niño experienced by Eritrea since 2015.[11] It noted that those conditions had further undermined household food and livelihood security, particularly for women and children, and contributed to a cholera outbreak across three of the country's six regions.[12] UNICEF noted that 2016 data indicated an increase in malnutrition rates over the previous few years in four of the six regions, with 22,700 children under 5 years of age projected to be affected by severe acute malnutrition in 2017; national data also indicated that half of all Eritrean children were stunted.[13]

27. There have been claims that the Government of Eritrea tries to conceal the real extent of the humanitarian predicament in the country. Indeed, there is little information about the concrete humanitarian needs of the Eritrean population. Major organizations which monitor indicators and provide analysis and early warning on food insecurity do not provide information on Eritrea.[14] The Special Rapporteur is concerned about the lack of data and stresses the importance of providing access to humanitarian actors.

28. While some interlocutors told the Special Rapporteur that they had witnessed an active economic life during visits to Eritrea, with thriving markets and well-stocked shops, Eritreans in the diaspora said that their relatives at home were struggling to meet their basic needs. While food was available, many households were unable to afford adequate and sufficient basic supplies and were trying to cope with acute water shortages, especially in Asmara. The recent UNICEF report confirms such an assessment (see para. 26 above). Increasing numbers of people are reportedly leaving drought-affected regions in search of better living conditions. The ability to purchase food and other basic items has also been hampered by cash withdrawal limits put in place following the currency exchange programme introduced by the Government at the end of 2015.

29. It has been reported that since October 2016 Internet cafes must register customers before they use the Internet, to make it possible to track their browsing history. If confirmed, this new regulation would further restrict freedom of expression. In addition, frequent power cuts and very slow connections interfere with the use of the Internet.

30. The Special Rapporteur is extremely concerned that the Government has taken no steps to address the concerns expressed by the commissions of inquiry. For example, there are reasonable grounds to believe that Eritrean officials have committed crimes against humanity, in a widespread and systematic manner, in Eritrean detention facilities, military training camps and other locations across the country over the past 25 years. Crimes of enslavement, imprisonment, enforced disappearance, torture, persecution, rape, murder and other inhumane acts have been committed as part of a campaign to instil fear in, deter opposition from and ultimately control the Eritrean civilian population since the authorities took control of Eritrea in 1991.

V. Eritrean refugees

31. The Special Rapporteur observes that, in 2016, Eritrean refugees constituted the fifth largest group of persons arriving in Europe from across the Mediterranean Sea (21,253 people or 6 per cent of the total) and that Eritrea was the only one of those five sending

[11] The negative impact on Eritrea of the drought caused mainly by El Niño was also highlighted by the Government of the Netherlands in February 2017. See https://www.government.nl/latest/news/2017/02/18/government-s-event-famine-in-the-horn-of-africa.

[12] UNICEF, "Humanitarian action for children: Eritrea" (2017). Available from https://www.unicef.org/appeals/files/2017_Eritrea_HAC(3).pdf.

[13] See https://www.unicef.org/appeals/eritrea.html.

[14] See, for example, the Famine Early Warning Systems Network (https://www.fews.net/). According to the International Food Policy Research Institute, a 2016 Global Hunger Index score could not be calculated for Eritrea because data for all underlying indicators were not available (ww.ifpri.org/topic/global-hunger-index).

countries not to be experiencing violent conflict.[15] Regarding arrivals in Italy, Eritreans constituted the second-largest group.[16]

32. The International Organization for Migration has noted a recent surge, with over 4,500 people crossing into Ethiopia since the beginning of 2017,[17] and the Office of the United Nations High Commissioner for Refugees (UNHCR) has reported that the number of Eritreans arriving in Italy by sea during the first three months of 2017 was comparable to the number recorded for the same period the previous year.[18]

33. Eritreans fleeing human rights violations in their home country continue to face life threatening situations in their attempts to seek refuge in third countries. These challenges are increasing because of the pushback by countries in the region and in Europe. Eritreans, like many other refugees and migrants travelling through Libya, suffer human rights violations and abuses in the course of their journeys. They are subjected to arbitrary detention, torture, ill-treatment, unlawful killings, sexual exploitation, forced labour, extortion and a host of other human rights abuses at the hands of smugglers, traffickers and representatives of State institutions. There have been numerous and consistent reports of rape and other sexual violence, indicating that women are at greatest risk of violence.[19] Media sources have reported that in April 2017 the Libyan authorities released 28 Eritreans who had been captured and enslaved by Islamic State in Iraq and the Levant in Sirte. They had been held in detention since the jihadist group had lost control of the city in December 2016.[20] These are examples of the extreme risks Eritreans are prepared to take to leave their country.

34. The Special Rapporteur also received information about the precarious situation of Eritrean Afar refugees in Yemen stemming from the prolonged conflict in that country. UNHCR has warned about the dangers of crossing from Africa to Yemen and the horrendous conditions and rising risks in the country, highlighting that war and insecurity mean that conditions there are not conducive for asylum.[21] As these examples show, Eritreans continue to take substantial risks to escape the human rights situation back home.

35. The Special Rapporteur takes note of European Union efforts to respond to the migration influx, but is concerned about an approach that appears to focus predominantly on external border protection and increased return rates. She stresses that any effort to curb the flow of refugees from Eritrea should not come at the expense of addressing the root causes of ongoing human rights violations in the country, which are the real drivers of forced migration from Eritrea.

36. The Special Rapporteur is particularly worried by the marked increase in numbers of unaccompanied and separated children from several countries making the journey to Europe. Fourteen per cent of all arrivals (25,846 children) were unaccompanied and

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[15] UNHCR, "Refugees & Migrants: sea arrivals in Europe", monthly data update for December 2016, available from https://data2.unhcr.org/en/documents/details/53447. The top four countries were the Syrian Arab Republic, Afghanistan, Nigeria and Iraq.

[16] See www.unhcr.org/news/press/2017/2/58b458654/refugees-migrants-face-heightened-risks-trying-reach-europe-unhcr-report.html.

[17] IOM, "IOM provides transport, access to aid for Eritrean refugees in Ethiopia" (14 March 2017). Available from www.iom.int/news/iom-provides-transport-access-aid-eritrean-refugees-ethiopia.

[18] UNHCR, "Italy: UNHCR update No. 13" (March 2017). Available from https://data2.unhcr.org/en/documents/download/56622.

[19] United Nations Support Mission in Libya and Office of the United Nations High Commissioner for Human Rights, "Detained and dehumanised: report on human rights abuses against migrants in Libya" (13 December 2016), p.12. Available from http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.

[20] Reuters, "Dozens of Eritrean and Nigerian former Islamic State captives freed in Libya" (5 April 2017). Available from www.reuters.com/article/us-europe-migrants-libya-women-idUSKBN1772NS.

[21] UNHCR, "UNHCR campaign spreads awareness about dangers of Yemen sea crossings" (7 February 2017). Available from www.unhcr.org/news/press/2017/2/5899ccae13/unhcr-campaign-spreads-awareness-dangers-yemen-sea-crossings.html.

separated children, including a large number from Eritrea,[22] more than double the 12,360 unaccompanied and separated children who arrived in 2015.[23] In 2013, the Special Rapporteur informed the Human Rights Council about the number of children she had met in refugee camps in neighbouring countries as part of the early warning function of the mandate. In 2016, she raised concerns about their vulnerability and their special protection needs in camps, en route and upon arrival. The concern remains valid more than ever today. The enormous risks faced by an increasing number of children moving on their own across international borders in order to flee violence, conflict, disaster, poverty and forced conscription was also highlighted in May 2017 by UNICEF.[24]

37. The Special Rapporteur is concerned about the persistence of gaps in systems to protect unaccompanied children, including from sexual exploitation and abuse, child labour, kidnapping by those involved in smuggling and/or trafficking, and detention. The psychosocial support necessary to address post-traumatic stress disorder, for example, is lacking. Based on her discussions with Eritrean children and those familiar with their situation, the Special Rapporteur is concerned that the procedures for recognizing unaccompanied and separated children as refugees are not always transparent. There have been allegations that in some countries the authorities delay decisions until children become adults. In this context, the Special Rapporteur would like to remind States parties to the Convention on the Rights of the Child about their obligation to respect, at all times, the best interests of the child, an obligation that applies to all children within a State's territory and subject to its jurisdiction.[25] Accordingly, asylum procedures should be based on an assessment of a child's best interests and take duly into account his or her views. Furthermore, she supports the call of UNICEF for faster procedures to reunite children with their families, including in destination countries.[26]

38. Throughout the European Union, about 93 per cent of Eritrean asylum seekers continued to be granted some form of protection.[27] This is in line with recently updated country-of-origin guidance provided by different countries and supports the Special Rapporteur's assessment that the critical aspects of the human rights situation in Eritrea remain unchanged. Moreover, the European Asylum Support Office, in a report on the national service and illegal exits from Eritrea, has noted that individuals who leave Eritrea in violation of Eritrean law are subjected to extrajudicial punishment upon return.[28] Eritreans who return voluntarily after having previously evaded the draft, deserted the army or left the country illegally, however, are not subject to the draconian laws at the moment, provided they have regularized their relationship with the Eritrean authorities prior to their return. The European Asylum Support Office stresses, however, that not all Eritreans are able to regularize their situation before returning, especially if they have been forced to return. In information published in January 2017 on the Eritrean civilian militia programme known as "the People's Army", the State Secretariat for Migration of Switzerland noted, as did the commission of inquiry, that the legal basis for the programme was unknown. In addition, national service evaders are punished inconsistently by the authorities. In some cases, the refusal to serve has no consequences; in other cases, such refusal leads to

[22] Save the Children, *Young, Invisible, Enslaved: The Child Victims at the Heart of Trafficking and Exploitation in Italy* (November 2016), pp. 22 ff.

[23] Ibid.

[24] UNICEF, *A Child Is a Child: Protecting Children on the Move from Violence, Abuse and Exploitation* (May 2017), p. 14. Available from https://www.unicef.org/publications/files/UNICEF_A_child_is_a_child_May_2017_EN.pdf.

[25] See Committee on the Rights of the Child general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, paras. 12-13.

[26] UNICEF, *A Child Is a Child*, p. 8.

[27] See http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_in_the_EU-28_by_outcome,_selected_citizenships,_2nd_quarter_2016.png.

[28] European Asylum Support Office, *Country of Origin Information Report: Eritrea — National Service and Illegal Exit* (November 2016), p. 11.

detention, forced recruitment into the military or the withdrawal of food coupons or business licences.[29]

39. Some government policymakers have sought to revise asylum policies so as to make it harder for Eritreans to get protection, but their efforts have not always been successful. For example, in 2016 the Upper Tribunal of the United Kingdom reversed a government decision limiting protection, having found that Eritrean asylum seekers who had left without fulfilling the arbitrary military/national service obligations were likely to be perceived upon return as draft evaders or deserters and would thus risk persecution.[30] The Upper Tribunal drew extensively on the findings of the reports of the commission of inquiry. Following the Upper Tribunal's decision, the Home Office of the United Kingdom issued a new country policy.

40. The Federal Administrative Court of Switzerland assessed the situation of Eritreans returning to their home country slightly differently. Early in 2017, the Court decided, in its decision D-7898/2015, that Switzerland would no longer grant refugee status to Eritreans who had left their home country illegally, barring the existence of any additional factors. Previously, the illegal departure from Eritrea had been considered sufficient to claim asylum in Switzerland since those who did so were regarded by the Eritrean authorities as traitors and risked detention for a considerable length of time were they to return. According to the Court, the previous position could no longer be maintained. In its ruling, the Court noted that several Eritreans living in Switzerland, some of whom had left illegally, were able to return to Eritrea without repercussions for short visits, after obtaining refugee status. The Court ruled that refugee status would only be granted if applicants could substantiate additional factors that might result in the Eritrean authorities regarding them as undesirable.

41. In that context, the Special Rapporteur reiterates her previous findings, also reflected in the reports of the commission of inquiry, that the Eritrean authorities consider those who leave Eritrea without an exit visa to be "illegal". Those who cannot obtain exit visas are seen as draft evaders or military deserters, as well as political opponents akin to traitors. If they returning, such individuals risk being detained in inhumane conditions and are most likely to be assigned or re-assigned to military training and service, which continues to amount to enslavement and forced labour. Additionally, and as the European Asylum Support Office has indicated, not all potential returnees can regularize their relationship with the Eritrean authorities. As reported by the commission of inquiry, Eritreans abroad must sign an immigration and citizenship services request form in order to regularize their situation before they can request consular services. By signing the form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course". Such a procedure gives the authorities carte blanche to mete out arbitrary punishment.

42. During the reporting period, the Special Rapporteur met several individuals who told her that individuals applying for family reunification had been requested to provide documentation from Eritrean embassies. It appears that similar requests have been made by the authorities of some countries in the context of asylum application processes. She would like to recall that the commission of inquiry obtained information that such documentation is provided by the diplomatic representations of Eritrea abroad only after payment of a 2 per cent rehabilitation tax. The Security Council believes that the Government of Eritrea uses illicit methods to ensure payment of the tax and in its resolution 2023 (2011) decided that Eritrea should cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent.

[29] See https://www.sem.admin.ch/dam/data/sem/internationales/herkunftslaender/afrika/eri/ERI-volksar...-d.pdf. (Available in German only.)

[30] See www.ecoi.net/News2016/UKCOURT.pdf.

VI. Engagement of Eritrea with external actors on human rights

A. Scrutiny by international and regional human rights mechanisms

41. In November 2016, the African Commission on Human and Peoples' Rights issued its decision relating to communication No. 428/12 (*Dawit Isaak v. Eritrea*), regarding the arrest of the Eritrean-Swedish journalist Dawit Isaak by Eritrean police on 23 September 2001. Since that date, Mr. Isaak, who is being held incommunicado at an undisclosed location, has never been charged with any offence and has never been brought before a magistrate or allowed access to counsel. In its communication No. 428/12, the Commission reiterated the decision it had taken in its communication No. 275/03 (*Article 19 v. Eritrea*) to recommend the release of Mr. Isaak and all others being held arbitrarily. It had found that Eritrea, a State party to the African Charter on Human and Peoples' Rights, had breached several Charter provisions. Consequently, it ordered the Government of Eritrea to release or to bring to a speedy and fair trial 18 journalists detained since September 2001, including Mr. Isaak. The Commission also recommended that the detainees be granted immediate access to their families and legal representatives and recommended that the Government of Eritrea should take appropriate measures to ensure payment of compensation to the victims of arbitrary arrest and enforced disappearance. The Commission noted with regret that Eritrea had failed to implement its previous decision on the matter, issued in 2003, and that as a result Mr. Isaak had been held incommunicado for 15 years.[76]

44. The Commission asked the Government of Eritrea to report to it on the implementation of the decision relating to communication No. 428/12 within 180 days, in accordance with rule 112, paragraph 2, of the Commission's rules of procedure. The Government has failed to do so.

45. In May 2017, Mr. Isaak was awarded the UNESCO Guillermo Cano World Press Freedom Prize in recognition of his courage, resistance and commitment to freedom of expression. The President of the jury noted that Mr. Isaak was among those who had persevered in shedding light in dark spaces and in keeping their communities informed against all odds. Noting that Mr. Isaak has spent nearly 16 years in jail, without charge or trial, she expressed the hope that the award would be a way for the world to say "Free Dawit Isaak now".

46. In January 2017, the African Committee of Experts on the Rights and Welfare of the Child issued its concluding recommendations on the report on the status of implementation by Eritrea of the African Charter on the Rights and Welfare of the Child. The Committee noted measures to attain the Millennium Development Goals but regretted that data to track progress was not available. The Committee raised a number of serious concerns with regard to the rights of children. It noted that children at the Sawa military training camp continued to be subjected to acts amounting to torture, inhuman and degrading treatment or corporal punishment and that children of particular religious groups, including Jehovah's Witnesses, were not able to enjoy freedom of religion. The Committee noted with concern the number of children involved in child labour, which was estimated by the International Labour Organization to be 183,000 in 2000. Regarding reports of the forced conscription of children, the Committee called on Eritrea to refrain from recruiting children into the army and other security forces, to ensure that those who violated that strict prohibition were punished and to refrain from using the educational system as a means of giving military training prior to full military service. The Committee also noted reports of sexual harassment and rape, particularly in military training camps and educational institutions or during interrogations.

47. The Special Rapporteur regrets that the Government of Eritrea continues to deny independent experts of international and regional human rights mechanisms access to the

[76] At the time of writing the present report, Mr. Isaak has been detained for more than 15 years.

country, as those mechanisms could undertake a comprehensive assessment of the human rights situation by taking into account the perspectives of all actors, including victims.

B. Assistance by the international community

48. The Special Rapporteur reiterates that efforts by international actors to reinforce engagement with Eritrea represent a move in the right direction after years of self-imposed isolation. The United Nations country team in Asmara is being strengthened with the deployment of several senior advisers who will focus on issues such as peace, development, youth, migration and implementation of recommendations arising from the universal periodic review. Through the 11th European Development Fund, the European Union too is supporting Eritrea in the implementation of those recommendations. The Special Rapporteur notes that the recommendations formulated by Member States in 2014 offer a framework for progress in several critical areas. However, she deplores the selective approach taken by Eritrea to the recommendations, noting that the Government has mainly agreed to those pertaining to economic and social rights. She expects that the assistance provided will enhance the Government's implementation in a comprehensive manner. The report of Eritrea scheduled for review during the thirty-second session of the Working Group on the Universal Periodic Review, to be held early in 2019, will indicate whether the Government is genuinely committed to addressing the broad array of serious and systemic human rights violations documented.

49. The Special Rapporteur notes that the Government of Eritrea continues to grant access to representatives of States and international entities, including to representatives of the migration departments of various European countries, whose aim is to reassess the country-of-origin information used by decision makers working in the area of asylum. It also notes, however, that none of the visitors, be they foreign diplomats or staff of international organizations based in Asmara, have been permitted to visit places of detention or military training centres, where the bulk of the violations take place. The Special Rapporteur has no information as to whether international actors request access or the ability to monitor such locations during their discussions with Eritrean officials.

50. Regrettably, the Government continues to deny civil society organizations access to Eritrea. During the reporting period, the Special Rapporteur met with civil society organizations and Eritrean human rights defenders engaged in monitoring and reporting on the human rights situation in Eritrea. They confirmed that there was still no space in Eritrea for independent civil society organizations, more specifically human rights civil society organizations, to operate. The Special Rapporteur commends the increased participation of Eritrean human rights defenders and African civil society groups in meetings and events such as the Citizens' Continental Conferences, which are held before the Summits of the Heads of State and Government of the African Union, or the NGO forums held before the summits of the African Commission on Human and Peoples' Rights. At those events, they express their concerns and share reflections on the state of human rights in Eritrea while advocating for accountability for human rights violations.

51. According to information reaching the Special Rapporteur, the office of religious affairs of Eritrea has advised representatives of authorized religious denominations that members of their partner organizations based abroad would not be granted visas to visit Eritrea. While Finn Church Aid is able to train teachers in Eritrea in collaboration with Eritrean teacher training institutions and national education officials, several other members of Christian churches based abroad have been denied access.

52. Based on her discussions with various interlocutors, the Special Rapporteur is convinced that the Government of Eritrea is keen to improve its diplomatic relations and to strengthen its cooperation with the international community, including development actors. It remains to be seen, however, what tangible results such engagement will yield in the area of human rights.

53. During the reporting period, the Special Rapporteur invited the Government of Eritrea to share information on the concrete steps it has taken to address the serious human

rights situation in the country. The Special Rapporteur regrets to inform the Human Rights Council that the Government did not respond.

54. In all her exchanges, the Special Rapporteur sought updates on the human rights situation in Eritrea. She was particularly interested to hear about any actions by the Government to stop ongoing human rights violations and ensure accountability for crimes committed, as recommended by the commission of inquiry. Vague references were made to a midterm report the Government was preparing in the framework of the universal periodic review but, at the time of writing, no public document was available. None of the interlocutors reported any progress having been made on the overall human rights situation, let alone regarding the key areas identified by the commission of inquiry in its recommendations addressed to the Government of Eritrea, for example in respect of the national/military service, disappearances, extrajudicial executions, rape and sexual violence. As a result, the Special Rapporteur can only conclude that the situation of human rights in Eritrea has not significantly improved.

C. Lack of progress

55. The commission of inquiry addressed a host of specific recommendations to the Government of Eritrea, none of which appear to have been implemented. As highlighted during her oral update to the Human Rights Council in March 2017, the Special Rapporteur wishes to reiterate the evident lack of progress on the most pressing issues.

56. The commission of inquiry called on Eritrea to implement fully and without delay the 1997 Constitution. Following announcements by the President, Isaias Afwerki, in 2014 that a new Constitution would be drafted, the Special Rapporteur was told in 2016 that a committee had been established for that purpose. No information is available about the actual steps taken to initiate such a process in a transparent, inclusive and participatory manner.

57. Furthermore, it appears that the Government has not taken any measures towards a reform that would bring its military/national service programme in line with international law. Eritreans continue to be subjected to indefinite national service. The Special Rapporteur has continued to receive reports of new cases of arbitrary arrest and detention, while the Government continues to refuse access to prisoners and to provide any information on individuals who have disappeared, some of whom have been missing for more than two decades. In addition, the Special Rapporteur has not been informed of any Government effort to address other crucial issues, including torture and sexual abuse in the army and detention centres.

58. Last but not least, the commission of inquiry called on the Government to ensure accountability for past and persistent human rights violations and crimes against humanity, including enslavement and forced labour, imprisonment, enforced disappearance, torture, and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and that it provide victims with adequate redress, including the right to truth and reparations. The Special Rapporteur deeply regrets that the Government of Eritrea has not made any effort to implement those recommendations and that it has shown no willingness to tackle impunity for perpetrators of past and ongoing violations.

VII. Human rights in Eritrea: the way forward

59. Starting in 2012, when the Human Rights Council established her mandate, the Special Rapporteur spent two years developing the role, devoting considerable time and effort to building bridges with the Government of Eritrea. That initial phase was followed by a period during which she ensured that the mandate remained strong and relevant while the commission of inquiry was operational. She now intends to devote resources to the fight against impunity, working with a broad spectrum of stakeholders, including victims, survivors, family members, human rights defenders and lawyers, in their search for justice and accountability for human rights violations.

60. In the light of the serious findings by the commission of inquiry, the Special Rapporteur is of the view that business as usual cannot be an option. Eritreans have suffered and continue to suffer serious abuses, some of which amount to crimes against humanity, while the Government continues to deny and deflect attention from the serious human rights situation. Additionally, she is convinced that there can be no sustainable solution to the Eritrean refugee outflow until the Government complies with its human rights obligations. The international community's engagement with Eritrea needs to be firmly guided by international human rights norms and standards aimed at putting an end to ongoing violations and impunity.

A. Improvement of the human rights situation

61. The Special Rapporteur suggests focusing on a set of specific areas to assist Member States and the international community more broadly in assessing positive changes in the human rights situation in Eritrea. If the Government of Eritrea is committed to rebuilding the trust of its people, it needs to demonstrate that it is willing to address the key areas identified by the commission of inquiry and the Special Rapporteur. The Government needs to demonstrate genuine commitment and serious determination to achieve progress on a number of areas by taking the concrete steps outlined below, which are based on the recommendations addressed by the Special Rapporteur and the commission of inquiry to the Government of Eritrea. They may serve to develop specific, time-bound benchmarks to assess substantive change.

62. The Government of Eritrea should indicate the steps it has taken to:

(a) Establish without delay an independent, impartial and transparent judiciary, and ensure access to justice for all;

(b) Allow for the creation of political parties and the holding of free, fair and transparent democratic elections at all levels;

(c) Permit human rights defenders and independent civil society organizations, including gender-specific organizations, to operate without constraint or interference;

(d) Discontinue indefinite military/national service by limiting it to 18 months for all current and future conscripts, as stipulated by the 1995 Proclamation of National Service;

(e) Put an immediate end to torture and ill-treatment, sexual violence and the enslavement of conscripts;

(f) Cease the practice of using conscripts, detainees, members of "the People's Army" and army reserves as forced labour;

(g) Stop carrying out arrests and detentions without a legal basis and release immediately and unconditionally all those unlawfully and arbitrarily detained;

(h) Provide information on the fate and whereabouts of all those deprived of physical liberty;

(i) Provide immediately information on all prisoners of war and release them promptly;

(j) Allow legal representatives and family members immediate access to detainees;

(k) Allow independent monitoring of all places of detention, with regard to both their legality and the conditions of detention;

(l) Immediately permit unhindered access by independent monitors, including the Office of the United Nations High Commissioner for Human Rights and other recognized organizations, to all places of detention, official and unofficial, to monitor the legality of detentions and the treatment of detainees and prison conditions, allow them to conduct regular and unannounced visits and act promptly on their recommendations;

(m) Put an immediate end to the use of torture and other forms of ill-treatment, establish adequate complaints mechanisms and ensure that prompt and effective investigations are conducted into all allegations of torture and ill-treatment with a view to bringing perpetrators to justice;

(n) Put an end to discrimination on grounds of religion or ethnicity;

(o) Prohibit the assignment of women and girls to officials' quarters for forced domestic servitude and implement a zero-tolerance policy for sexual abuse in the army and in detention centres.

B. Accountability for past violations

63. The commission of inquiry called on the Government of Eritrea to ensure accountability for past and persistent human rights violations and crimes, including enslavement, imprisonment, enforced disappearance, torture and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and provide victims with adequate redress, including the right to truth and reparations. It noted, however, that far-reaching and substantial institutional and legal reforms would be required before the domestic legal system could hold perpetrators to account in a fair and transparent manner.

64. As Eritrea is not a party to the Rome Statute of the International Criminal Court, jurisdiction of the Court depends on a Security Council referral or on Eritrea accepting its jurisdiction. Thus, the commission of inquiry recommended that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court. During her interactive dialogue with the General Assembly in October 2016, the Special Rapporteur briefed Member States about the findings of the commission of inquiry, namely its conclusion that there are reasonable grounds to believe that Eritrean officials have committed crimes against humanity since 1991. The Special Rapporteur called on Member States to adopt a resolution requesting the report of the commission of inquiry to be submitted to the Security Council and for the human rights situation in Eritrea to be referred to the Prosecutor of the International Criminal Court. For reasons unrelated to the human rights situation in Eritrea, it is unlikely that a referral to the International Criminal Court is an imminent option.

65. Additionally, the commission of inquiry recommended that an accountability mechanism be established under the aegis of the African Union and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity. The main objective of the Special Rapporteur's participation in various human rights forums held under the auspices of the African Union, as well as her mission to the African Union, was to follow up on this specific recommendation. The necessary first links have been made and the report of the commission of inquiry has been transmitted to the respective African Union dignitaries and officials. The aim is to make the situation of human rights in Eritrea an urgent issue at the level of the African Union, one step at a time, in order to ensure that the idea of an accountability mechanism to address international crimes in Eritrea gains enough traction for its establishment.

66. As a third avenue for tackling impunity, the commission of inquiry recommended that Member States exercise jurisdiction over crimes against humanity when any alleged offender is present on their respective territories, or extradite him or her to another State in accordance with their international obligations. Given the long-term perspective required for both aforementioned avenues, it would be essential to explore alternative approaches to ensure accountability for human rights violations where such violations amount to crimes against humanity, as per the findings of the commission of inquiry.

67. There are accountability mechanisms that can be used to secure justice for victims of international crimes at the domestic level in certain countries. Given the political and practical challenges that may be involved in securing a Security Council referral to the International Criminal Court, these mechanisms can offer more immediate relief and

realistic options for victims seeking justice. During the reporting period, the Special Rapporteur embarked on a round of talks aimed at exploring the options available under universal jurisdiction.

68. Universal jurisdiction is the ability of the judicial system of any State to try persons for crimes committed outside its territory which are not linked to the State by the nationality of the suspect or the victims or by harm to the State's own national interests.[32]

69. Various countries have adopted laws that permit domestic courts to exercise universal jurisdiction, including for those crimes identified by the commission of inquiry, irrespective of the nationality of the victim or the perpetrator or of the location of the crime. According to a 2012 study, 163 States could exercise universal jurisdiction over one or more crimes under international law, either as such crimes or as ordinary crimes under national law.[33] States that have included crimes against humanity or torture as crimes in their national laws and provided for universal jurisdiction over such crimes could exercise jurisdiction over Eritreans suspected of having committed such crimes. Such proceedings would be consistent with the principles set out in the preamble of the Rome Statute of the International Criminal Court which, inter alia, sets out that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

70. The importance of universal jurisdiction for victims' search for justice is on the rise. In 2016, 13 countries opened 47 cases based on the principle of universal jurisdiction, seven more than the previous year and 10 more than in 2014.[34] One of the landmark cases in 2016 was the conviction of the former Chadian dictator Hissène Habré by a special court in Senegal for crimes against humanity, war crimes and torture, including rape and sexual slavery. A coalition of victims and civil society organizations created the conditions for a successful prosecution under the principle of universal jurisdiction. The case is encouraging for all victims of crimes against humanity, as it signals that they can drive the struggle against impunity and efforts to bring perpetrators to justice, no matter how high-ranking they may be.[35]

71. In 2012, the African Union adopted, on the recommendation of ministers of justice and/or attorneys general, a model national law on universal jurisdiction over international crimes at the Twenty-first Ordinary Session of its Executive Council.[36] The model law is a non-binding instrument aimed at assisting African Union member States in adopting or strengthening national legislation on the exercise of universal jurisdiction over international crimes and in giving effect to their obligations under international law. The objectives of the model law are to combat impunity for crimes set out in the model law, including crimes against humanity, provide for mutual legal assistance and cooperation among States, and provide for rehabilitation and reparation for the victims.

72. In the European context, the establishment of the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes has no doubt contributed to increasing the number of cases under universal jurisdiction. The network's secretariat, which is based in the Hague, the Netherlands, brings

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[32] See the report of the Special Rapporteur on the obligation to extradite or prosecute submitted to the International Law Commission at its fifty-eighth session (A/CN.4/571, para. 31). See also Amnesty International, *Universal Jurisdiction: Strengthening This Tool of International Justice* (London, 2012) p. 6.

[33] Ibid., p. 24.

[34] Trial International, European Centre for Constitutional and Human Rights, International Federation for Human Rights, International Foundation Baltasar Garzón and Redress, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017* (Geneva).

[35] For details of the case, see Reed Brody, *Victims Bring a Dictator to Justice: the Case of Hissène Habré* (Bread for the World, Berlin, 2017).

[36] African Union Executive Council decision 708 (XXI), available from www.un.org/en/ga/sixth/71/universal_jurisdiction/african_union_e.pdf. The issue of universal jurisdiction has also been discussed in the context of the relationship between the African Union and the European Union (see the report of the African Union-European Union Technical Ad Hoc Expert Group on the Principle of Universal Jurisdiction, available from http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208672%202009%20REV%201).

together prosecutors, investigators, representatives of ministries of justice and legal officers to exchange information during its biannual meetings, which are also attended by several observer States. It aims to facilitate cooperation between national authorities in the prosecution of international crimes.

73. The effective application of universal jurisdiction will largely depend on the availability of the structures, capacities and resources required for ensuring accountability for international crimes. Given the experience of the commission of inquiry and the Special Rapporteur, it seems unlikely that the Government of Eritrea will provide investigators and prosecutors access to Eritrea to gather evidence or agree to extradite suspects to third countries. In similar situations, civil society organizations have contributed by collecting documentation about serious human rights violations, which may serve as evidence both for current domestic trials, as well as for future investigations at the international level. The Special Rapporteur wishes to stress, however, that questions have been raised in investigations at the domestic level as to whether documents collected by civil society actors would be allowed as evidence. These issues need to be carefully considered ahead of any such initiatives. The Special Rapporteur also recalls that, at the end of its mandate, the information compiled by the commission of inquiry was transferred to the Office of the United Nations High Commissioner for Human Rights, which may make it available for the purpose of accountability where confidentiality and protection concerns have been addressed.

74. There are other significant challenges, such as the immunity accorded to serving government officials and the fact that suspected perpetrators rarely travel outside Eritrea. Furthermore, efforts to initiate and pursue universal jurisdiction cases are likely to be unsuccessful without the required political will, at both the domestic and the international levels. Civil society actors, in close collaboration with survivors, victims and victims' organizations, can play an important role in creating and maintaining such political will, as happened in the Hissène Habré case. During the coming year, the Special Rapporteur plans to concentrate on raising awareness about the accountability mechanisms available at the domestic level and on the role of victims in such processes.

VIII. Conclusions and recommendations

A. Conclusions

75. **The Government of Eritrea has demonstrated an ongoing unwillingness to meet its obligations and commitments under regional and international human rights instruments.**

76. **In the context of its military/national service, which is characterized by the indefinite length of conscription and harsh conditions, neither of which respect the human rights of conscripts, urgent reforms are required. The judicial system of Eritrea, including its special court charged with adjudicating complex cases, is inadequate for prosecuting perpetrators of international crimes. There are still no strong institutions established according to the rule of law capable of effectively protecting the human rights of the Eritrean people. The Government's ongoing denial of the existence of sexual exploitation and violence in the army also constitutes a denial of women's rights and must end. The Special Rapporteur believes that ignoring the call for justice and accountability by Eritrean survivors and victims of human rights violations will have devastating consequences and perpetuate the never-ending cycle of impunity.**

B. Recommendations

77. **The Special Rapporteur notes that the Government of Eritrea has ignored the bulk of the recommendations she has made in previous reports, having addressed only two of them, namely the recommendation that it ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that**

it seek technical assistance from the Office of the United Nations High Commissioner for Human Rights. All the recommendations of the commission of inquiry remain unheeded. The Special Rapporteur therefore reiterates her own recommendations, as well as those of the commission of inquiry.

1. Government of Eritrea

78. The Special Rapporteur recommends that the Government of Eritrea:

(a) Share substantive information about the concrete efforts it has made to put an immediate end to the crimes against humanity and human rights violations identified by the Special Rapporteur and the commission of inquiry;

(b) Release immediately and unconditionally all those unlawfully and arbitrarily detained, including the 11 members of the G-15 who are currently imprisoned, journalists and members of religious groups;

(c) Immediately allow independent media outlets and civil society organizations to operate freely, without constraints or interference;

(d) Investigate promptly allegations of rape and sexual violence in the military/national service and secondary institutions such as the Sawa military training camp and prosecute perpetrators immediately;

(e) Set up a task force on sexual and gender-based violence in the army to address past and ongoing violations;

(f) Adopt protocols to prevent further occurrences while providing support to victims;

(g) Take concrete steps to ensure a truly participatory process in preparation for the next review of Eritrea in the context of the universal periodic review to ensure that the entire process adequately reflects the diverse voices of civil society organizations involved in the protection of human rights in Eritrea.

2. Member States and international organizations

79. The Special Rapporteur recommends that Member States and international organizations:

(a) Ensure accountability for those responsible for serious human rights violations in Eritrea, including by having the Security Council refer the situation in the country to the International Criminal Court, in line with the finding of the commission of inquiry that there are reasonable grounds to believe that crimes against humanity have been committed;

(b) Exercise jurisdiction over crimes against humanity when any alleged offender is present on the territory of a Member State or extradite him or her to another State in accordance with its international obligations;

(c) Provide refugee status to Eritrean nationals seeking protection, in accordance with the provisions of international law governing asylum and, in particular, the Convention relating to the Status of Refugees, respect the principle of non-refoulement and end bilateral and other arrangements that jeopardize the lives of those seeking asylum;

(d) Keep Eritrea under close scrutiny until consistent and tangible progress has been made with regard to the situation of human rights and ensure the centrality of human rights in all engagement with Eritrea;

(e) Cooperate closely with Eritrean human rights defenders and civil society organizations to ensure that human rights remain at the core of all engagement with the country, while also bearing in mind the findings of the commission of inquiry.

3. African Union

80. **The Special Rapporteur reiterates the recommendation of the commission of inquiry regarding the setting up of an appropriate accountability mechanism under the aegis of the African Union to hold perpetrators of crimes against humanity in Eritrea accountable, with a view to securing justice and truth.**

4. Civil society organizations

81. **The Special Rapporteur recommends that civil society organizations:**

(a) **Set up and support networks among victims of crimes against humanity and other human rights violations, human rights defenders and their partners at regional and global levels;**

(b) **Build skills and seek ways and means to consolidate capacity to continue monitoring, documenting and reporting in the field of human rights, as well as drive the fight against impunity in their quest for justice.**

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Report of the Special Rapporteur on the situation of human rights in Belarus

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Belarus. In his report, the Special Rapporteur describes the return of the Government of Belarus to the policy of large-scale repression against citizens who exercise or defend their rights. The suppression of peaceful social protests in March 2017 ended a brief period of reticence to recourse to violence and deprivation of freedom. Throughout the reporting period, the entrenched oppressive laws, which in the last decades have crystallized into a systemic denial of the enjoyment of civil freedoms, remained in force. The parliamentary elections of September 2016 remained highly controlled and the ensuing parliament continued to be devoid of pluralism despite the fact that, after 20 years, two opposition candidates were allowed to enter parliament. Recourse to the death penalty increased, with more executions than in previous years. Given the overall tightening of the already strict control of public life exercised by the authorities and the steep deterioration in their handling of assembly, association and media rights, the Special Rapporteur deems it necessary for the international community to remain vigilant over the situation of human rights in Belarus.

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Contents

		Page
I.	Introduction	3
	A. Background	3
	B. Methodology	5
II.	Rule of law, legal framework and related developments	5
III.	Engagement with the international human rights system	5
IV.	Human rights concerns	7
	A. Freedom of opinion and expression, and freedom of the media	7
	B. Freedom of association	8
	C. Freedom of peaceful assembly	9
	D. Situation of human rights defenders and civil society	10
	E. Torture and other cruel, inhuman or degrading treatment or punishment	12
	F. Arbitrary arrest and detention, political prisoners and enforced disappearances	13
	G. Death penalty	14
	H. Rule of law and the independence of judges and lawyers	15
	I. Economic and social rights and conditions of work	16
	J. Discrimination	17
V.	Conclusions and recommendations	20

I. Introduction

A. Background

1. The mandate of Special Rapporteur on the situation of human rights in Belarus was created in 2012 by the Human Right Council in its resolution 20/13, on the basis of a report by the High Commissioner for Human Rights (A/HRC/20/8). The Council requested the mandate holder to report annually to it and to the General Assembly. The Council has since renewed the mandate four times, for one year, in resolutions 23/15, 26/25, 29/17 and 32/26.

2. The present report is submitted to the Council pursuant to its resolution 32/26. The report covers the period from 1 April 2016 to 31 March 2017 and is based on information received up to the latter date. The Special Rapporteur makes reference to his latest report to the General Assembly (A/71/394), in which he focused on the electoral process in Belarus and which contains relevant information.

3. The Special Rapporteur regretfully observed a rapid and steep deterioration in the overall human rights situation in Belarus during the month of March 2017. In February 2017, 470,000 Belarusians were informed that they must pay a tax because they had worked fewer than 183 days in 2016. Ever since, waves of protest demonstrations have swept the cities and the capital with the slogan "We are not parasites", a reference to President Lukashenka's presidential decree No. 3 of 2015 on the prevention of social dependency, which introduced the tax to fight "social parasitism".

4. Throughout March 2017, the Government executed a centrally planned, nationwide violent crackdown on peaceful demonstrators, human rights defenders, political opponents and journalists, as well as on foreign observers of the events. The crackdown came to a head around 25 March (Freedom Day), a popular but unacknowledged commemoration of national independence. The authorities also conducted preventive arrests of political opponents and civil activists, some unannounced, some accompanied by public allegations of an armed conspiracy to overthrow the Government, thereby opening up the possibility of silencing opponents for several years.

5. The wave of mass arrests in March was the severest since the post-election crackdown in December 2010. It is another instance of the cyclical pattern of the human rights policy of the authorities. Over the past two decades, they have repeatedly returned to repression, following brief periods of relative liberalization, while leaving intact the legal order that was purposefully developed to suppress several basic human rights. The last similar cycle of repression was described in detail by the Human Rights Council when it created the mandate of the Rapporteur in 2012 (see resolution 20/13).

6. During 2016, law enforcement agents seemed to have instructions to avoid physical attacks and detention when enforcing the unchanged laws that criminalize all unregistered public activities. The authorities acted instead by dispensing administrative and financial penalties. The international human rights community hoped that this time the cyclical pattern would not reoccur. The Special Rapporteur regrets that his warnings about the dangers inherent in the systemic character of the entrenched oppressive laws have proved right. The potential for deterioration again manifested itself through mass repression of those who endeavour to exercise their rights.

7. In his most recent report to the Council, the Special Rapporteur assessed the level of compliance by Belarus with recommendations addressed by United Nations human rights mechanisms to the country (see A/HRC/29/43, paras. 28-33 and 129). In the present report, the Special Rapporteur intends to continue with that analysis, given that the Government of Belarus announced on 24 October 2016 the adoption of an inter-agency plan for the period 2016-2019 for the implementation of recommendations made during the second cycle of the universal periodic review of Belarus and by the treaty bodies.[1] The Government has

[1] See www.government.by/upload-docs/file70000d75fa0cea0e.PDF

promoted the plan as a cornerstone of its human rights policy. The Special Rapporteur deems it therefore important to provide a general review of the plan in section III below and make detailed references to it in consecutive sections.

8. The parliamentary elections of 11 September 2016 were held without police violence and without the arrest of political opponents, unlike the presidential election of 2010. The Special Rapporteur underlines, however, the findings of the Organization for Security and Cooperation in Europe (OSCE) in its report on the conduct of the elections of 2016.[1] In the report, OSCE observed that, despite some marginal improvements, a large number of recommendations it had made on the occasion of previous elections had been ignored by the Government.

9. The allowance granted to two opposition candidates to enter parliament does not reflect any governmental opening to pluralism. The absence of the full enjoyment of any freedom conducive to free and fair elections made it impossible for a real opposition to be represented in parliament, the only one in Europe that has been without a proper opposition for decades.

10. The presidential election of 2015 and the parliamentary elections of 2016 provided opportunities for the Government to show goodwill and tangible improvements in the field of human rights. Alas, the latest elections were a reflection of an untouched, sophisticated system of oppression of basic rights, as before, during and after the elections, the freedoms of association, of expression, of peaceful assembly and of the media remained strictly limited to the sole benefit of the incumbent in power.

11. Even before the massive crackdown of March 2017, the Special Rapporteur had received reports of continuing harassment of social activists, human rights defenders and political opponents. The "permission-based" regime remains unchanged, with a legal system and a State apparatus organized to suppress any expression of opinions other than those of the Government. For more than 20 years, the Belarusian governance system has remained based on an all-powerful State, driven by presidential decrees and controlling more than 80 per cent of the economy and the totality of the judicial and information systems.

12. The administration provides for satisfactory statistical data on certain development indicators, which were used to measure the implementation of the Millennium Development Goals, such as life expectancy, school enrolment of children, literacy and other important fields that contribute to the enjoyment of certain rights. However, as the United Nations has adopted the Sustainable Development Goals, the Special Rapporteur deems it of paramount importance to assess sustainable development in Belarus in the light of the enjoyment of human rights.

13. The use of capital punishment has resumed. In 2016, four executions were conducted, of which three concerned cases which were pending before the Human Rights Committee, and four new death sentences were handed down. The Special Rapporteur recalls that no other country in Europe or Central Asia applies the death penalty. As a result, Belarus remains banned from membership of the Council of Europe.

14. Belarus has still to establish a national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), despite repeated calls to do so by various human rights mechanisms. The Special Rapporteur deplores the absence of progress in this regard, as in many other areas.

15. The Special Rapporteur believes that international scrutiny should continue to be exercised, as it remains a crucial assistance to the citizens and the Government of Belarus. An acknowledgment of the compliance of the Government with its international obligations should be informed by human rights indicators rather than vague commitments or geopolitical considerations.

[1] See www.osce.org/odihr/elections/287486?download=true.

B. Methodology

16. As in previous years, the Special Rapporteur made a request to visit Belarus. His letter, addressed to the Permanent Representative of Belarus to the United Nations Office at Geneva and dated 10 January 2017, remains unanswered, as have previous letters. The Special Rapporteur continues to deplore this situation.

17. Owing to his inability to visit the country officially, the Special Rapporteur's assessment of the current situation has been informed by data provided by many human rights actors: rights holders, victims of violations and their relatives, civil society actors, representatives of international and regional organizations, and diplomats. The review by the Committee on the Elimination of Discrimination against Women of the State party report was the occasion for women's rights organizations to publish a set of reports, and the Special Rapporteur commends them for their work. While seeking and reviewing information, he has continued to be guided by the principles of independence, impartiality and objectivity. He continues to attach particular importance to the safety and security of sources of information.

II. Rule of law, legal framework and related developments

18. The Special Rapporteur regrets that no legislative action was undertaken during the period under review to improve the situation of human rights; the oppressive laws and practices remain in force.

19. The legal framework continues to be amended and governed by presidential decrees, which overrule constitutional law.

20. The parliament remains an affiliation of the Government and merely approves the laws presented to it. The selection of two token opponents to enter parliament following the parliamentary elections of September 2016 does not modify the overwhelming presence of pro-Government representatives (97 per cent).

21. As with the legislative branch, the judiciary is under the full control of the President, who retains the right to appoint, promote or demote any judge or prosecutor.

22. The absence of a system of checks and balances, the non-effectiveness of the parliament and the full control of the President over the judiciary illustrate the absence of the rule of law in Belarus.

III. Engagement with the international human rights system

23. The Committee on the Elimination of Discrimination against Women reviewed the eighth report of Belarus on 28 October 2016. The Special Rapporteur welcomes the engagement of the authorities of Belarus with the Committee.

24. Belarus will be reviewed by the Committee on the Elimination of Racial Discrimination at its ninety-fourth session at the end of 2017 and the Special Rapporteur welcomes the submission by Belarus of its combined twentieth to twenty-third periodic reports. It will provide an opportunity to analyse the progress made by Belarus in the fight against racism and xenophobia since the Committee last reviewed the State party's compliance with the provisions of the Convention in 2003 (CERD/C/BLR/CO/18-19).

25. The Special Rapporteur welcomes the ratification by Belarus, on 29 November 2016, of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. The ratification had been recommended by many actors, including Member States, notably during the thirtieth session of the Working Group on the Universal Periodic Review. Hopefully, the ratification of the Convention will allow for a progressive enhancement of the situation of persons with disabilities, notably through the adoption of legal texts specifically prohibiting discrimination on the grounds of physical, sensory, intellectual or mental disabilities.

26. Since the previous report of the Special Rapporteur, a number of cases have been filed under the Optional Protocol to the International Covenant on Civil and Political Rights. At its 116th, 117th and 118th sessions, the Human Rights Committee adopted views on 10 communications with regard to Belarus, most of which concerned violations of the rights to a fair trial, physical integrity and freedoms of expression, assembly and association.[3]

27. The main addition to the national official texts dealing with human rights is the inter-agency plan to implement the accepted recommendations from the second cycle of the universal periodic review and from treaty bodies, approved by the Council of Ministers on 24 October 2016, covering the period 2016-2019. According to the Special Rapporteur's records, the plan is not yet available to the public in English. It was presented by the Deputy Minister for Foreign Affairs and the United Nations office in Belarus on 9 December 2016 to various partners on the occasion of Human Rights Day.[4]

28. Regarding the content of the plan, the Special Rapporteur is concerned that the list of 100 activities or projects relates solely to a selection of recommendations made by the Working Group on the Universal Periodic Review and by some treaty bodies. The plan ignores the various recommendations made by special procedure mandate holders who have conducted visits to Belarus since 1997 (the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on trafficking in persons, especially women and children), in addition to the recommendations made by the Special Rapporteur on the situation of human rights in Belarus since 2012.

29. Furthermore, the Special Rapporteur is concerned that the plan does not envisage any action regarding the abolition of torture and of the death penalty. Neither does it tackle the system of criminalization of non-registered public activities, including the exercise of freedoms of peaceful assembly, association, expression and other basic human rights. Similarly, it does not envisage actions for the State organs relating to acknowledgment of and cooperation with civil society.

30. The Special Rapporteur is aware that the plan was not developed through a proper participatory process involving civil society organizations, whether registered or not registered.[5]

31. Belarusian non-governmental organizations (NGOs) have expressed approval of the adoption of the plan.[6] They emphasize, however, that the plan falls short of taking into account the various recommendations that they had made public, in a clustered manner, in May 2016, following the second cycle of the universal periodic review of Belarus.[7] The Special Rapporteur shares the concern of the NGOs that the potential development and implementation of the plan may not be effective as long as it is not a participatory process.

32. The Special Rapporteur remains dubious as to the effects of the holding of a number of workshops and seminars organized by the Government with the support of international partners on the reality of the legal framework and the policies and practices of the State. On the issue of the death penalty, he notes a conference held in Minsk on 10 March 2016. In

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[3] See Human Rights Committee communications No. 2047/2011, *S.V. v. Belarus*, decision of inadmissibility adopted on 30 March 2016; No. 2084/2011, *V.L. v. Belarus*, decision of inadmissibility adopted on 30 March 2016; No. CCPR/C/116/D/2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016; No. 2082/2011, *Levinov v. Belarus*, Views adopted on 14 July 2016; No. 2089/2011, *Korol v. Belarus*, Views adopted on 14 July 2016; No. 2093/2011, *Misnikov v. Belarus*, Views adopted on 14 July 2016; No. 2101/2011, *Evzrezov v. Belarus*, Views adopted on 14 July 2016; No. 2112/2011, *K.A. v. Belarus*, decision of inadmissibility adopted on 3 November 2016; No. 2135/2012, *Y.Z. v. Belarus*, decision of inadmissibility adopted on 3 November 2016; No. 2139/2012, *Poplavny and Sudalenko v. Belarus*, Views adopted on 3 November 2016.

[4] See www.mfa.gov.by/en/press/news_mfa/e4d67633e1891aae.html.

[5] See www.spring96.org/en/news/85305.

[6] See www.spring96.org/en/news/85347.

[7] See www.upr.belhelcom.org/docs/indikatory-k-rekomendaciiam-upo.pdf.

December 2016, another conference on the same subject was again held in Minsk, only days after an execution was revealed.

IV. Human rights concerns

A. Freedom of opinion and expression, and freedom of the media

33. In March 2017, the media in Belarus faced extraordinary pressure from the authorities. The Belarusian Association of Journalists registered 123 cases of violations of journalistic rights during that single month.[8] Most of the incidents occurred when the media, fully complying with both the official and the self-regulatory prescriptions on visibility, attempted to cover the street demonstrations. Many other violations had a pre-emptive and retaliatory character, such as the purposeful damaging of equipment. All incidents were carried out with great brutality, admittedly following orders. In six cases, journalists were beaten by groups of law enforcement personnel.

34. Nearly 100 detentions and 40 administrative trials against journalists were reported, leading to 10 sentences of incarceration for 5 to 15 days.[9] Several cases are still pending at the time of writing of the present report.

35. On 31 March, two offices of Belsat TV in Minsk, which is part of Polish public television, were searched and equipment was seized. The police justified its action by citing a trademark suit initiated by an equipment seller several years previously. Throughout March, the police singled out Belsat journalists when harassing, detaining and beating journalists.[10]

36. The Special Rapporteur has continued to receive accounts of severe curtailment of freedom of expression during the whole period under review. Journalists and bloggers have had to endure administrative harassment, fines, temporary arrests, confiscation of personal belongings and undue intrusion into their private spheres. As many as 13 instances of detention of journalists were recorded in 2016.

37. The Special Rapporteur has reported on violations of the freedom of opinion and expression in the context of the parliamentary elections of September 2016 (A/71/394). Since the elections, no changes have occurred in the regulatory system based on the licensing and registration of media outlets by State-appointed bodies and the Government itself. The Government continues to be equipped with the power to warn, suspend and deregister all and any media outlets based on its own discretionary interpretation of what it regards as content failures.

38. Many journalists continue to work without accreditation, as the system is designed to forbid and criminalize any journalistic activity by denying accreditation. The holding of parliamentary elections in September 2016 was the occasion of another tightening of restrictions on accreditation. Freelance journalists Larysa Shchyrakova and Konstantin Zhukouski were sentenced four times to heavy fines for working with foreign media without accreditation. The Special Rapporteur is concerned about reports regarding Mr. Zhukouski, who, in addition to being fined, was detained with another journalist, Aliaksei Atroshchanka; both reportedly were ill-treated by police officers.[11]

39. The Special Rapporteur is deeply concerned at the situation of online media, users of which are subject to harassment, indicating that the system of controlling content and

[8] See www.baj.by/en/content/statement-baj-regarding-persecution-journalists-march-2017.

[9] Journalists were put on trial on charges, among others, of violations of the following provisions of the Administrative Code: art. 22.9 for illegal production of mass media products (i.e. for work without accreditation); art. 23.34 for violating the procedure for organizing or holding mass events (such as participating in an unsanctioned mass event); art. 23.4 for disobedience to lawful demands of the police; and art. 17.1 for minor hooliganism.

[10] See www.hrw.org/news/2017/04/03/belarus-freedom-day-crackdown.

[11] See www.spring96.org/files/misc/review_2016_en.pdf.

intimidation regarding free expression extends to all citizens. A user of social media received a trial notification for having shared a post calling for a rally on the day following the parliamentary elections.[12]

40. The inter-agency plan contains three planned activities that relate to the media. One is to monitor compliance with the legislation on the mass media; another relates to the conduct of board members of media outlets and journalists to promote the right to the freedom of speech at international events; and the third envisages the development and implementation of educational programmes for journalists on interconfessional and inter-ethnic relations.

41. The Special Rapporteur expresses scepticism about the potential of such activities to enhance the protection of human rights. The organization of events for journalists under the auspices of the Ministry of Information may only further enhance their dependence on that body, instead of assisting them to exercise their right to work free of governmental control.

42. Similarly, the efforts envisaged by the Government to tackle the issue of hate speech based on religion or ethnic origin do not touch upon the so-called extremism laws, which are often used by the authorities to sanction reports that are critical of the Government or merely covering events. None of the activities envisaged address the accreditation issue, which is a pressing one.

43. The Special Rapporteur notes that the inter-agency plan does not include actions to implement the only media-related recommendation stemming from the second cycle of the universal periodic review and which was endorsed by Belarus, namely the need to improve the overall situation of media freedom (see A/HRC/30/3, para. 127.79).

B. Freedom of association

44. Freedom of association in Belarus has been violated regularly by the practice of the State itself, based on a restrictive set of rules. The requirements for registering a public association are cumbersome, expensive and obstructive. As an example, to register a nationwide association, it is necessary to have at least 50 founders in the various regions of the country. Despite numerous recommendations addressed to Belarus to amend its legal framework, the Special Rapporteur sees no improvement for those who wish to organize themselves.

45. According to the information available to the Special Rapporteur, no new registrations have been accepted since the amendments to the law on public associations and on political parties were adopted on 20 February 2014. The many obstacles put in the way of registration by the State make it virtually impossible for an organization to be officially recognized and able to work freely. The Special Rapporteur recalls that non-registration entails the criminalization of any activity the organization undertakes, according to article 193-1 of the Criminal Code. At its sixty-fifth session, the Committee on the Elimination of Discrimination against Women recommended that the Government of Belarus review the registration requirements for NGOs working on human rights issues, in particular women's rights organizations, so that they could be established and operate without undue restrictions (see CEDAW/C/BLR/CO/8, para. 17).

46. The run-up to the parliamentary elections of September 2016 was marked by increased oppression of those willing to form movements (A/71/394). In 2016, the Ministry of Justice rejected for the fifth time in six years the request for registration of the public campaign "Tell the Truth", which provides for critical scrutiny of political life in Belarus. No new political party has been formed, while the request for registration by the Belarusian Christian Democrat party has been repeatedly rejected. Individuals tempted to get organized peacefully to criticize the legal or political regime or to raise awareness on social issues have been harassed.

[12] See www.svaboda.org/a/belarusa-apiarsynin-sudzili-za-palitycny-repost-ukrantskie/28021615.html.

47. As an example, relatives of persons incarcerated for crimes related to drug consumption wished to get organized in Hrodna, to raise awareness of the rights of prisoners, and to provide legal and psychological support. The State representatives in the city refused to register the group, Mothers' Movement 328.[13]

48. In another instance, the Centre for Gender Studies Ruzha in the Mogilev region was denied registration on the basis of the inadequacy of its main objective, the fight against gender discrimination in Belarusian law. According to the administrative decision handed over to the Centre, the "acknowledgement of gender discrimination in Belarus does not correspond to norms of the law on equality between women and men".[14]

49. Ruzha was also denied registration by a regional department of justice, on the grounds that working on gender discrimination does not fall under the competency of the Centre as equality between women and men is ensured by the State authorities. The Special Rapporteur wishes to underline that the State authorities not only deny the reality of gender discrimination in Belarus but further instrumentalize that denial to impede civil society from working freely and openly on such issues, leaving victims of gender discrimination with ineffective avenues for seeking redress.

50. The systematic denial of registration of new organizations continues to be often grounded in petty arguments. The authorities invariably find some element missing or misspelled, such as a phone number or street name, in the extraordinary amount of documents to be submitted. According to information received by the Special Rapporteur, several organizations expressed discouragement after repeated attempts to obtain registration. The Special Rapporteur wishes to sound an alert about the possible successful registration fatigue, distilled for over two decades by the authorities.

51. Unfortunately, the inter-agency plan does not foresee any activity to improve the enjoyment of freedom of association, despite repeated calls by the international community. In fact, the words "freedom of association" are absent from the plan.

C. Freedom of peaceful assembly

52. The official handling of the right to peaceful assembly suffered the most dramatic deterioration during the events of February and March 2017.

53. The Special Rapporteur closely monitored the massive rallies which started in February 2017, organized to protest against the implementation of presidential decree No. 3, known as the law against social dependency (see A/HRC/32/48, para. 114), adopted in 2015. It provided for a new tax on people unemployed for more than 183 days a year, who are designated by the derogatory term of "parasites". According to a tax inspection in February 2017, as many as 470,000 people were obliged to pay the fee amounting to $250, about two thirds of the average monthly salary. The implementation of this arbitrary and cruel measure amidst a degrading economic environment prompted the largest protests since 2010 in the streets of many cities across Belarus.

54. In March alone, more than 900 people were subjected to various forms of repression in connection with the demonstrations. Hundreds of them were temporarily deprived of their freedom of movement. On 27 March, 177 persons were swiftly sentenced to fines or detention for up to two weeks, the maximum as provided under the law.

55. The misdemeanour charges were fabricated, misrepresenting the behaviour of peaceful demonstrators against all the evidence. The majority of those detained in connection with the protests of 25 March were later released without charge, others were charged with offences such as hooliganism, resisting arrest or participating in unsanctioned protests. Many did not have timely access to lawyers and could not call defence witnesses.

[13] See Viasna, "Human rights situation in Belarus in 2016: analytical review", available from www.spring96.org/files/misc/review_2016_en.pdf.

[14] See www.news.tut.by/society/508632.html.

56. Many of those arrested were beaten, kicked, clubbed and physically abused. On 25 March, the police brought up water cannons, prisoner transport vehicles, armoured vehicles and other equipment for dispersing crowds. On Independence Prospect in Minsk, the police ordered the crowd to disperse, but as the entire area was blocked off, there was no way out but into the police vans.

57. During the events, the practice of "preventive actions" reappeared. Attesting to the planned nature of the wave of repression, such actions on the eve of Freedom Day rallies focused on political leaders, human rights activists and journalists, and the arrests were conducted in half a dozen cities. On 25 March, prior to the rallies, riot police raided the office of the human rights centre Viasna, one of the country's leading human rights groups, detaining 58 people.

58. The authorities prefabricated the illegality of the demonstrations. The Minsk city authorities did not respond in time to the organizers' request to hold the 25 March rally in central Minsk. Only hours before the rally was due to begin did the authorities suggest an alternative site, which the organizers could not accept on logistical grounds. The mayor then announced that any gatherings on 25 March would be considered unlawful.[15]

59. The context of the parliamentary elections of September 2016 was conducive to tightening the curtailment of the freedom to gather peacefully. Massive arrests would have been seen as a resurgence of the human rights violations that occurred in 2010. Thus, the trade-off between massive arrests and systematic fining of participants for peaceful assembly was observed on a large scale before, during and after the elections. The Special Rapporteur has received information according to which as many as 484 cases of fines were registered in 2016, representing a total amount of 200,000 euros, which makes an average of 413 euros per fine, which is more than one month of the average salary in Belarus. By fining those who dare to express different views, the authorities aim to block activists not only on political issues, but also on social and environmental issues.

60. For instance, a candidate of the United Civic Party received a fine of approximately $535 on 30 August 2016 for participating in a non-authorized rally to support the legal action of the mother of Yuri Zakharchenko.[16] The Special Rapporteur recalls that Mr. Zakharchenko, a former Minister of the Interior, disappeared in 1999.

61. A call to participate in a rally on 12 September 2016, the day following the parliamentary elections, was followed by many. Some participants received fines, including Pavel Severinets, who co-chairs the Belarusian Christian Democrat party (non-registered), who was fined $540.[17]

62. Only one activity envisaged in the inter-agency plan relates to the right to peaceful assembly, namely the review of international practices on authorizing mass events and the consideration of expediency of the application of such experiences in the national context. The Special Rapporteur recalls that the Working Group on the Universal Periodic Review called on Belarus twice to bring its legislation on mass events into line with the International Covenant on Civil and Political Rights (see A/HRC/32/48, para. 51). The Special Rapporteur does not see the added value in reviewing practices when a State has been called to fulfil a clear obligation over more than six years.

D. Situation of human rights defenders and civil society

63. On 25 March, police raided the offices of Viasna and detained 58 people, mostly Belarusian human rights activists, as well as journalists and a protection coordinator from the international group Frontline Defenders. Aleh Hulak, the chairman of the Belarusian Helsinki Committee, was also detained. They were taken to a police station, photographed, had their identity documents registered and were released after a couple of hours.

[15] See www.hrw.org/news/2017/04/03/belarus-freedom-day-crackdown.

[16] See www.svaboda.org/a/kandydatku-u-deputaty-volhu-majoravu-znou-astrafavali/27955597.html.

[17] See www.bchd.info/12164-severinca-snova-oshtrafovali-za-palchisa-na-50-bazovyh.html.

64. Among the many victims and witnesses of the brutality with which the armed, masked riot police carried out the raid was Aliaksei Loika, a Viasna staff member. He was thrown onto the concrete floor face down, causing concussion, a policeman put his booted foot on Mr. Loika's head, ordered him not to move and hit him; as a result, Mr. Loika was later hospitalized.

65. Tatsiana Revyaka, a board member of Viasna, was detained on 26 March while she was observing the rally on Oktabryskaya Square. At Minsk central police station, she was forced to stand facing the wall for two hours with her arms raised above her head before being released without charge.

66. In Minsk, Vitebsk, Biaroza, Polotsk and Molodechno, human rights activists were detained and in some cases sentenced to detention of up to 15 days on trumped-up charges.[18]

67. The Government continued to refuse to register prominent human rights organizations, such as Viasna, which representatives of those organizations appealed once again to the Ministry of Justice, to no avail. The marginal engagement of some State actors with only a few members of NGOs has to be put in perspective with the otherwise overwhelmingly difficult working environment in which those organizations try to deliver their services.

68. The Committee on the Elimination of Discrimination against Women expressed concern about the frequent repression, harassment, violence and threats of sexual assaults against women human rights and political activists (see CEDAW/C/BLR/CO/8, para. 16).

69. The Special Rapporteur deplores the fact that there is still no permanent avenue of cooperation between the State and civil society human rights actors, showing disrespect for the legitimate concerns raised by activists. No new independent public association was registered during the period under review.

70. Human rights activist Alena Tankachova, who was expelled from Belarus in February 2015 on fabricated grounds, namely driving above the speed limit, is still banned from entering Belarus. Her most recent appeal to the authorities to reduce the term of the ban was made on 21 February 2017 and was supported publicly by 16 NGOs in Belarus, including the Belarusian Helsinki Committee, the only accredited human rights NGO.

71. Andrei Bandarenka, who founded the human rights association Platform Innovation, and whose imprisonment for three years was politically motivated, was the subject of an additional criminal charge on 14 November 2016, based on article 411 of the Criminal Code, for allegedly having disobeyed the administration of the correctional institution in which he was detained. The Special Rapporteur notes that Mr. Bandarenka was released on 31 March 2017 after having served his term. Resorting to article 411 of the Criminal Code is another way to silence opponents and activists by charging them on behavioural transgressions that no oversight can objectively assess.

72. The authorities continue to intimidate activists. On 6 March, the office of a coalition of civic groups was searched and office equipment was seized, without proper justification. The apartments of three human rights defenders were also searched in the context of the rallies against presidential decree No. 3.

73. The Special Rapporteur acknowledges the few contacts developed during the period under review between selected members of organizations of human rights defenders and some representatives of the Ministry of Foreign Affairs on the occasion of events involving international partners.

74. Unfortunately, the inter-agency plan does not foresee any activity aimed at opening a dialogue with members of civil society working on human rights issues. NGOs are mentioned only four times in the plan: in the context of improving the mechanisms for expanding the use of social contracts to support the activities of NGOs specializing in the provision of social services to the population; in relation to broadening the scope of their

[18] See www.hrw.org/news/2017/04/03/belarus-freedom-day-crackdown.

involvement in facilitating the exercise of human rights by the inmates of penal institutions, and when it comes to improving coordination between government agencies and NGOs engaged in the provision of palliative care services. A further activity refers to continuing the practice of involving public associations in discussing new legislative drafts, particularly by including members of such associations in public advisory councils.

75. In the view of the Special Rapporteur, the four activities envisioned in the plan, or rather goals in very narrow areas or too broadly formulated, do not represent a sufficient commitment of the Government to the realization of the recommendations it accepted during the second cycle of the universal periodic review (see A/HRC/30/3, paras. 127.23-127.27). One of the recommendations the Government accepted called for enabling more effective involvement of civil society in the preparation of legal acts and another for strengthening further the links of cooperation and coordination with civil society as regards the promotion and protection of human rights.

E. Torture and other cruel, inhuman or degrading treatment or punishment

76. In Belarus, ill-treatment by various State authorities forms part of a systemic oppression. The Special Rapporteur continues to be concerned about the flow of information alleging acts of torture and ill-treatment by law enforcement and prison officers. Victims generally face obstruction of the judiciary when they call for investigations into such allegations. Regrettably, the authorities still do not allow access to the penitentiary system for independent investigators or monitors.

77. Specifically, reports of violence against women engaged in human rights or political activities include beatings, sexual assaults, threats of sexual assaults and forced placement in mental institutions. Some of the illegal acts performed by officials of the State or representative of local authorities have reportedly led to cases of forced suicides.[19]

78. Mothers' Movement 328, which remains unregistered, has stated that the procedures for the criminal conviction of drug addicts, who are often underage, and their treatment during incarceration are cruel and often amount to torture. The fact that their association is denied registration also makes remedy of such cases extremely difficult.

79. As an example of the unwillingness of the prosecutors to investigate cases of ill-treatment and torture, an activist who was severely beaten by two policemen during his arrest on 11 August 2016 was told that his complaint could not be investigated further as he had failed to identify the person who broke his jaw.

80. The Special Rapporteur is concerned about a case of violence, including sexual violence, against a minor in the detention centre in Homiel, where he is incarcerated despite having a mental illness. His mother filed a complaint and subsequently received threats, including over the telephone, from the prosecutor in charge of the case. The minor allegedly wrote a confession, which he denied afterwards. He was sentenced to nine years' imprisonment.

81. According to the information available to the Special Rapporteur, many activists report acts of brutality, including the use of derogatory language and violence, including sexual violence and threats of sexual violence, when they are questioned by law enforcement officers.

82. Acts of torture and ill-treatment in Belarus have been regularly denounced by the international community. The Special Rapporteur therefore regrets that the inter-agency plan does not provide for any activity in this regard, not even awareness-raising campaigns or training for prison officials. The only activity related to the conditions of detention is

[19] See submission by Belarusian NGOs to the Committee on the Elimination of Discrimination against Women, "Answers to the list of issues and questions prior to the submission of the eighth periodic report of Belarus" (2016). Available from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BLR/INT_CEDAW_NGO_BLR_25453_E.pdf

listed under the heading "Equality and non-discrimination" and does not address the shortcomings of the State authorities responsible for the management of prison conditions.

F. Arbitrary arrest and detention, political prisoners and enforced disappearances

83. The authorities arbitrarily arrested hundreds of peaceful demonstrators in February and March 2017. Most of them were apprehended without any explanation and later released. Others were fined and incarcerated for up to two weeks on unsubstantiated misdemeanour charges.

84. Additionally, on 21, 22 and 24 March, the security forces arrested 32 people on suspicion of committing a crime under part 3 of article 293 of the Criminal Code (training or other preparation of persons for participation in mass disorders and funding or other material support of such activities). Those arrested were allegedly planning to overthrow the Government on Freedom Day. The official media accompanied the arrests with reports of related incidents, such as gunmen in a car attempting to force their way through a border checkpoint in Ukraine. As at 31 March, some detainees were still being held in the jails of the Ministry of the Interior and the KGB security service in Minsk.[20]

85. "Preventively" apprehended detainees also included the leader of the Young Front organization, Zmitser Dashkevich. Former presidential candidate Mikalai Statkevich, a main leader of some of the rallies, disappeared for the three days of the Freedom Day events and was eventually released from a KGB facility.

86. The mass arrests and the preventive detention of activists and politicians prior to Freedom Day annul an apparent attempt in the second half of 2016 to replace the systematic arbitrary detention of activists participating in non-authorized rallies by heavy fines.

87. Many activists had actually found the system of fines no less intimidating than arrests, especially as in 2016 the authorities had stopped mutating the unpaid fines into days of incarceration days in many cases and had resorted rather to the confiscation and auctioning of personal property, including real estate, such as apartments.

88. The case of Nina Baginskaya, aged 70, illustrates the strategy of swapping detention for fines and then confiscation. She was heavily fined for having waved a national flag alone on a square in May 2016. For the unpaid part of the fines, her washing machine and microwave oven were seized and auctioned, even as another portion of her fines were deducted from her pension.[21] Later, in August 2016, her summer house was auctioned, as the equivalent of $3700 worth of unpaid fines.[22]

89. Since the Freedom Day rallies, arbitrary detention has been used again to try to silence the most vocal human rights defenders and political opponents of the Government. In the view of the Special Rapporteur, the disproportionate use of judicial force against dissenting voices, often on fabricated grounds, makes the Government accountable for violating the right to freedom of movement, in addition to the rights to freedom of expression and freedom of peaceful assembly.

90. A number of detentions have gone unreported by the authorities. In Brest on 5 March 2017, five representatives of a contest movement were arrested and were still in custody at the time the present report was finalized. In Molodechno, just when the rally was over on 10 March, four political leaders and nine journalists were arrested for periods between 7 and 15 days. On 12 March, two bloggers were also arrested in Brest without justification. Another blogger was tentatively abducted by three individuals in plain clothes on 11 March in Pinsk; however, he managed to escape owing to the intervention of other people who were present and the inaction of police officers who were also present.

[20] See www.belarusdigest.com/story/belarus-authorities-uncover-putsch-deter-mass-protests-29530.

[21] See www.svaboda.org/a/27758841.html.

[22] See www.belapan.com/archive/2016/08/08/859041/.

91. Arbitrary detentions affect other targeted groups. The situation of Roma women is particularly alarming. Officials of the Ministry of the Interior arbitrarily detain Roma women, some of them repeatedly, on the token basis of preventing offences or of so-called special decrees of the President.[23] These arbitrary arrests, which reveal ethnic profiling measures, violate the freedom of movement of Roma women by diffusing a feeling of fear of moving outside their communities.

92. The Special Rapporteur is concerned about the situation of Alexander Lapitski, who has been forced by the judiciary to undergo medical treatment in a psychiatric hospital. He was found guilty by a court in Minsk of having committed "socially dangerous acts" of insulting the President of Belarus and two judges.[24]

93. The Special Rapporteur notes the return to the practice of putting political opponents of the Government in jail. Viachaslau Kasinerau, who had been sentenced to 15 days of administrative detention for having participated in a rally on 17 February 2017, was transferred to the detention centre of the Ministry of the Interior on 28 March, because of an alleged crime of hooliganism, namely throwing a noose over a statue. The Special Rapporteur shares the view of Belarusian NGOs that have declared him to be a political prisoner.[25]

94. Two other political opponents of the Government remain in prison in Belarus. On 10 July 2015, Mikhail Zhamchuzhny was sentenced to six and a half years of imprisonment under a strict regime. His sentence also bans him from holding positions related to the implementation of organizational and administrative duties for a period of two years and eight months. Uladzimir Kondrus was taken into custody on 14 June 2016 for the alleged crime of rioting in December 2010.[26]

95. As of the finalization of the present report, no information was available on the case of the "fighters", who were reported by the official media as conspiring to overthrow the Government. It remains to be seen whether the allegations will be proven through a fair, transparent and non-politicized procedure.

96. The Special Rapporteur continues to be concerned at the absence of progress in solving outstanding cases of the enforced disappearance of political opponents of the President. These cases, which although they date back to 1999 and 2000 are still unsolved, concern the abduction of prominent Belarusian opposition politician Viktar Hanchar and his business associate Anatol Krasouski, of Yury Zakharanka, the former Minister of the Interior, and Dmitri Zavadski, a cameraman (see A/HRC/29/43, para. 66).

97. The inter-agency plan does not include any commitment regarding arbitrary detentions or disappearances. Several recommendations by human rights mechanisms to put an end to the practice of arbitrary detentions in Belarus continue to be ignored by the authorities. They have not acknowledged any of the recommendations of the Working Group on the Universal Periodic Review on the issue.

G. Death penalty

98. Belarus executed four individuals in 2016: Sergey Ivanov, Sergey Khmelevski, Ivan Kulesh and Guennadi Yakovitsky. That represents the highest number of disclosed executions since 2008 and the resurgence of a practice, after the European Union had partially lifted its sanctions against Belarus in February 2016, that the State had not implemented in 2015, prior to the lifting of the sanctions. Two individuals were on death row as at 31 March 2017. Since the previous report of the Special Rapporteur to the Human Rights Council (A/HRC/29/43), three additional sentences of capital punishment have been handed down, most recently on 17 March.

[23] See submission by Belarusian NGOs, "Answers to the list of issues and questions".
[24] See Viasna, "Human rights situation in Belarus in 2016".
[25] See www.spring96.org/en/news/86654.
[26] See www.spring96.org/en/news/84325.

99. The Special Rapporteur recalls that Belarus is the only country in Europe and the former Soviet area which retains the death penalty.

100. The Special Rapporteur publicly condemned these executions and has repeatedly recommended that the authorities adopt a moratorium on capital punishment. He has also pointed to the ambiguous discourse of the authorities, which on the one hand organize, with the support of international partners, discussions on the issue of capital punishment and on the other not only continue the practice of executions but also bluntly violate their international obligations: three of the individuals who have been executed had cases pending before the Human Rights Committee.

101. The same ambiguity can be seen in the way the authorities of Belarus have approached recommendations on the abolition of the death penalty made during the second cycle of the universal periodic review. While Belarus accepted a recommendation to carry out public campaigns explaining the arguments for the abolition of the death penalty with the aim of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (see A/HRC/30/3, 127.1), it rejected the numerous recommendations to consider ratifying that Protocol or to adopt a moratorium on the death penalty (see A/HRC/30/3, 130.1-130.17).

102. The Special Rapporteur refers to the report published by the International Federation for Human Rights and Viasna on the issue of the death penalty in Belarus.[27] He fully shares the conclusions in the report that convicted persons and their families have a number of their human rights violated. The lack of a fair trial and of the independence of the judiciary in Belarus renders any sentence of capital punishment highly disputable.

103. In addition, the conditions of detention amount to torture and ill-treatment. The Special Rapporteur recalls that the secrecy surrounding executions and the fact that no details on executions or places of burial are given to the families also amount to torture.[28]

104. Furthermore, the Special Rapporteur questions the argument put forward by the authorities that capital punishment serves as a deterrent to criminality, when in fact no information on executions is publicly communicated. The secrecy surrounding executions goes against paragraph 7 (c) of General Assembly resolution 71/187 on a moratorium on the use of the death penalty.

105. In a system where the President has the power to commute sentences, avoiding executions would be an easy step to undertake. The Special Rapporteur understands that an omnibus referendum, to take place in 2018, could address the issue of the abolition of the death penalty. Given that official discussions on the issue of the death penalty do not include the best-known NGO working on this issue and that no official awareness-raising campaigns are taking place in the country, the stated goodwill of the Government towards shaping public opinion in relation to abolition is clearly missing.

106. The Special Rapporteur regrets that the inter-agency plan does not include any action aimed at supporting the abolition of the death penalty or the adoption of a moratorium.

H. Rule of law and the independence of judges and lawyers

107. The Special Rapporteur has noted no positive changes in the administration of justice in Belarus over the past three years. Despite repeated recommendations to separate the judiciary from the executive branch, the system for appointing and dismissing judges remains under the full control of the President, in accordance with decree No. 6 of 29 November 2013. The fact that the term for judges is time-bound for five years and that it

[27] "Death penalty in Belarus: murder on (un)lawful grounds", available from www.fidh.org/IMG/pdf/belarus683angbassdef.pdf.

[28] See, for example, Human Rights Committee communication No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003.

may or may not be extended places members of the judiciary in a submissive position vis-à-vis the executive authorities.

108. Furthermore, article 100 of the Code on the Judicial System and the Status of Judges of 29 June 2006 provides for the replacement of judges on leave by either a retired judge or any "other person who fulfils the requirements set for a position of judge". The executive branch alone assesses what those requirements are and whether they are fulfilled or not, leaving many possibilities for arbitrary decisions to be made, resulting in possible arbitrary judgements. The Special Rapporteur is particularly worried by this in a situation where the courts can hand out death sentences.

109. Similarly, the right everyone has to be defended by a lawyer of their choice is not assured in Belarus. According to article 44 of the Criminal Procedure Code, the authority in charge of a criminal investigation may remove the defence lawyer of the accused individual if circumstances are discovered that would allow for such a decision. This provision leaves another door open to arbitrary behaviour.

110. Lawyers in Belarus cannot work if they are not registered in a territorial bar association. To be able to practise, they must obtain a licence delivered by the licence commission of the bar association, which is itself chaired by the Deputy Minister of Justice, in accordance with article 10 of the law on the bar association and lawyers' activity. The Ministry further controls the qualifications needed to become a lawyer and decides on the extension of licences. It also has the power to launch investigations of lawyers, to suspend them from professional activity for the time those proceedings last and to disbar them.

111. The Special Rapporteur is concerned about accounts he has received of clients of lawyers testifying to the refusal of the latter to work on certain cases for fear of losing their job.

112. Belarus accepted two recommendations related to the judiciary during the second cycle of the universal periodic review, namely to ensure that the judiciary is free from any interference from other branches of government, and to continue promoting the independence and impartiality of the judiciary. The Special Rapporteur therefore deplores the fact that no action in that regard is envisaged in the inter-agency plan.

E. Economic and social rights and conditions of work

113. Belarus did not implement the recommendations of the Committee on Economic, Social and Cultural Rights or those of the International Labour Organization regarding the elimination of forced labour. Amidst a difficult economic environment in Belarus, both individuals who work and unemployed people are suffering deteriorating conditions in which to enjoy their economic and social rights. It was reported in August 2016 that the number of unemployed people had grown by 83,900 in one year.[29] While the World Bank ranked Belarus thirty-seventh out of 190 countries for ease of doing business in *Doing Business 2017*, the National Statistics Committee of Belarus revealed that real income had decreased by 4 per cent in 2016. The Special Rapporteur notes that Belarus has been undertaking discussions on acceding to the World Trade Organization, with a view to restructuring its economy. He is worried about the impact of the economic plunge on the economic and social rights of Belarusian citizens. The social data that the Government has been putting forward to promote its human rights record may no longer be sustainable.

114. The Special Rapporteur deplored the approval, on 6 May 2015, of presidential decree No. 3 on the prevention of social dependency, which created the conditions for the imposition of forced labour in Belarus. It provides for the payment of fees by certain categories of unemployed citizens, including women raising children up to a certain age, persons with disabilities, senior citizens and students. It also grants the police the right to arrest persons "with obligations" (such as parents who have children in the custody of the

[29] See https://ej.by/news/society/2016/09/27/belstat-naschital-v-belarusi-426-tysyach-bezrabotnyh.html.

Government) for even a single absence from work and send them to compulsory work. Those who cannot pay the fines are forced to undertake unpaid work.

115. The large protests in many cities of the country against the implementation of decree No. 3 illustrate the limits of the Government's drive to criminalize self-employment and non-registered unemployment. The Special Rapporteur notes that for 2017 the President suspended the collection of fines envisaged in the decree, which otherwise remains valid.

116. The absence of a flourishing economic perspective for individuals encourages recourse to degrading means of obtaining money. The Committee on the Elimination of Discrimination against Women noted that many women are victims of exploitation in prostitution, owing to the lack of alternative economic opportunities (see CEDAW/C/BLR/CO/8, para. 24). It is estimated that about 22,000 women are sex workers in Belarus, where prostitution is prohibited by article 17.5 of the Code of Administrative Offences and punishable by fines.

117. The Special Rapporteur notes the attempt by the newly elected member of parliament, Hanna Kanopatskaya, to present a draft law entitled "Decriminalization of economic relations in Belarus. New opportunities for interaction between parliamentarians and businesses", which contains provisions to remove criminal charges for crimes of an economic nature.

118. The Special Rapporteur is alarmed by the continuation of forced labour, including by minors. Resorting to free human resources is not a way to tackle the economic disarray of the country.

119. The Special Rapporteur has received reports of local authorities instructing managers of State-owned companies to release their employees to, for instance, harvest crops or clean up the verges of highways. If employees resist, they risk disciplinary measures or termination of their contracts if they are employed on short-term contracts. Forced labour in Belarus also includes compulsory unpaid work on weekends ("subbotniks"). Similarly, individuals who are dependent on substances, notably on alcohol, are forced to perform work for free.

120. Forced labour affects minors, who are also requested to participate in similar activities. The Special Rapporteur was dismayed at the report of the death of 13-year-old Viktoryia Papchenia, who was hit by a truck when harvesting potatoes.[10]

121. In terms of the right to education, the Special Rapporteur notes that the Minister of Education stated in August 2016 that an independent agency to monitor the quality of higher education, in accordance with the requirements of the Bologna Process on comparability in the standards and quality of higher education qualifications, was not necessary.[11] The Special Rapporteur wonders why Belarus joined the Bologna Process in 2015 if the intention was to ignore its regulations.

122. The inter-agency plan contains only two provisions pertaining to labour rights: one which calls for the implementation of a State programme on social protection, which does not tackle the issue of forced labour; and another activity which reads as raising awareness of the national labour law among the international community. That last activity is only designed to promote the state of play on Belarus labour policies in international forums. The plan fails to list any activity that would put an end to the practice of forced labour or to the fining of unemployed or self-employed individuals.

J. Discrimination

123. The Special Rapporteur deplores the continuing absence of a specific anti-discrimination law in Belarus, which would prohibit discrimination based on the grounds of race, religion, sexual orientation and gender identity, language, political conviction or

[10] See www.charter97.org/en/news/2017/1/31/239371/.

[11] See www.naviny.by/new/20160830/1472557054-ministr-obrazovaniya-ne-schitaet-neobkhodimym-sozdavat-nezavisimuyu-strukturu.

physical or mental disability. The Special Rapporteur has continued to receive information on cases of discrimination and regrets that victims have no legal remedies at their disposal.

124. The plan contains only three activities under "equality and non-discrimination". One of them involves analysing the current legislation and assessing the need to draft specific legislation that would prohibit discrimination on all grounds. The Special Rapporteur recalls that the international community has been expecting such legislation to be adopted for more than 10 years. Similarly, the plan contains a chapter on gender equality, which deals with five activities aiming merely at the provision of statistics and the promotion of gender equality in the media. The plan fails to provide for the drafting and adoption of a law on gender equality in accordance with international standards.

I. Gender

125. The review of Belarus by the Committee on the Elimination of Discrimination against Women in October 2016 provided an in-depth analysis of the current situation of women's rights in the country. The Special Rapporteur noted the few positive developments mentioned by the Committee, especially in the legal framework, and the increase of shelters provided to victims of domestic violence and of trafficking.

126. The Committee otherwise reiterated most of their concluding observations adopted after the previous review in 2011. Belarus still has to adopt a law on gender equality or comprehensive anti-discrimination legislation, including a clear definition of all forms of discrimination against women. Domestic violence, wage disparities and conditions for women detainees continue to be of concern. Women grow up and live in a society where the perpetuation of gender stereotyping and patriarchy is a State-led process, through school programmes and curricula, employment and social policies, and the statements of leaders.

127. The head of the Central Election Commission, Lidia Yermoshina, who has occupied the same position for the last 20 years, described women having a career and not looking to get married as "cruel, psychologically destroyed, something inhuman". She added that "a woman not looking to get married is not normal of course".[12] President Lukashenka declared that "being President is not the business of a woman".[13]

128. The judiciary in Belarus is alarmingly not aware of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and generally ineffective when victims complain about violations.

129. The fact that Belarus has yet to adopt legislation on domestic violence and marital rape, despite repeated calls from international observers, testifies to the lack of will to put an end to this phenomenon. Despite the provision of additional shelters, victims of gender-based violence often feel abandoned and do not report acts to the police, owing to their fear of not being listened to and the lack of an effective response from the judiciary.

130. The Special Rapporteur stresses that presidential decree No. 18 of 24 November 1996 gives social services the authority to take minors from their families when they declare the living conditions of the child unsatisfactory, or if the parents are neglecting the child. It does not provide for a dialogue between social workers and parents, nor for a legal definition of parental neglect. As reported to the Special Rapporteur, the decree disproportionately affects women and single mothers.[14]

131. The Committee on the Elimination of Discrimination against Women mentioned the high risk of gender-based violence that is faced by women in prostitution when they are confronted by the police and expressed concern at reports of sexual abuse of women detainees by male prison staff (see CEDAW/C/BLR/CO/8, paras. 26 and 44). The absence of proper counselling and legal support for victims of torture and violence leads to a revictimization of survivors.

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[12] See www.belarus-watch.org/2016/articles/interview-yermoshina.html.

[13] See www.udf.by/news/main/audio-08146-lukashenko-prezident-zhenschina-ne-muzhchina.html.

[14] See, for example, www.nash-dom.info/30188, www.vkurier.by/76997, and www.vkurier.by/78761.

8. Persons with disabilities

112. The Special Rapporteur commends the ratification by Belarus of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto on 14 November 2016, and hopes that a specific prohibition of discrimination against persons with physical, sensory, intellectual or mental disabilities will be adopted soon to bring the domestic legislative framework into line with the standards contained in the Convention[1].

9. Lesbian, gay, bisexual, transgender and intersex persons

113. In October 2016, the House of Representatives adopted at the first reading a draft law entitled "On amendments and additions to certain laws of the Republic of Belarus (to protect children from information harmful to their health and development)". Although the bill does not contain provisions for administrative or criminal liability based on sexual orientation and/or gender identity, the Special Rapporteur shares the concerns of lesbian, gay, bisexual, transgender and intersex activists in Belarus that forbidding the dissemination to children of information "discrediting the institution of family and marriage" would be interpreted in a discriminatory way.[2] In addition, forbidding the sharing of any information that would discredit the institution of the family threatens freedom of expression.[3]

114. The Special Rapporteur remains concerned by reports of violent acts and intimidation against members of the lesbian, gay, bisexual, transgender and intersex community and the lack of proper investigation into such cases when they are reported to the police. A prominent case of bias-motivated violence was the death of Mikhail Pashkevich, who died on 27 October 2015 following a homophobic attack 17 months earlier. The case remains improperly investigated, causing anxiety and distrust of the authorities.

115. The inter-agency plan includes two proposed activities which aim to promote family values and contribute to "mainstreaming family as a lifestyle". These activities serve to promote the above-mentioned stereotypes. There are no provisions for ending violence against or promoting inclusion of those whose sexual orientation is not "traditional".

6. Religious groups

116. The Special Rapporteur has received reports of harassment of Jehovah's Witnesses. According to the law on freedom of conscience and religious organizations, a religious group which has more than 20 members needs to register as a religious organization. Although the Jehovah's Witnesses have three religious buildings in Belarus, members of the group have to ask the local authorities for permission if they want to meet in residential or non-residential premises for religious services. In many cases, the authorities refused permission, de facto criminalizing the religious services as illegal activities. In addition, in May 2016, one of the two traditional annual meetings of Jehovah's Witnesses in Vitebsk was prohibited by local officials. There are also reports of gatherings being interrupted, of false allegations of non-authorizations in the form of non-appealable written warnings and of arbitrary detentions. In the first half of 2016 there were three incidents of Jehovah's Witnesses being detained for publicly sharing their beliefs in their neighbourhoods. Furthermore, religious literature, printed or in audio form, and video materials have to undergo a State religious examination, according to the law on freedom of conscience and religious organizations.

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[1] See www.humanrightsfirst.org/blog/homophobic-legislation-threatens-lgbt-community-belarus.

[2] International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-sponsored Homophobia. A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition* (Geneva, May 2016).

V. Conclusions and recommendations

137. **The analysis of the information available during the period under review shows that the human rights situation in Belarus has seen a dramatic deterioration. The Special Rapporteur is concerned that the protests, triggered by an unfair decree taxing the unemployed, were met with the arrests, arbitrary detention and deprivation of liberty on trumped-up charges of more than 900 individuals, including opposition leaders, human rights defenders, journalists and foreign visitors. That level of violation of civil rights had been unseen since the crackdown on peaceful demonstrators in December 2010.**

138. **During the events of March, the authorities revived the policy of arresting political opponents on trumped-up criminal charges and on a "preventive" basis, a practice it was believed they had given up in 2015, prior to the presidential elections. The Special Rapporteur will keep a watching brief to see if these actions will also result in the reoccurrence of longer terms of imprisonment handed down to political opponents of the Government.**

139. **The recent behaviour of the authorities testifies to their refusal to reform the entrenched oppressive legal system designed to curtail basic freedoms. Governance continues to be based on blocking and punishing expressions of dissent and on recourse to bureaucratic restrictions, intimidation and ill-treatment.**

140. **The ratification of the Convention on the Rights of Persons with Disabilities is a welcome step. The Special Rapporteur hopes that the Government will implement the concluding observations of the Committee on the Rights of Persons with Disabilities when it reviews the reports of Belarus in a more cooperative manner than the authorities have so far displayed vis-à-vis the recommendations of the human rights mechanisms.**

141. **The adoption of an inter-agency plan for the implementation of selected recommendations from some human rights mechanisms cannot be described as a significant step towards more respect for human rights, as many human rights actors were kept away from its preparation and because of the absence in it of key human rights concerns that have been expressed for years by the international community.**

142. **The parliamentary elections of September 2016 were the occasion for the Government to show real improvements, but this opportunity was missed, as serious issues repeatedly raised by various partners persisted before, during and after the poll.**

143. **The current level of scrutiny by the United Nations of the respect for human rights in Belarus must therefore be maintained, especially given the response to the recent demonstrations.**

144. **The Special Rapporteur reiterates his readiness to cooperate with the Government of Belarus. The recommendations that he made in his previous reports remain valid.**

145. **In addition, the Special Rapporteur recommends that the Government:**

(a) **Stop all ongoing retaliatory procedures initiated in the wake of recent social protest movements and release all political prisoners, individuals and journalists who are detained;**

(b) **Put an end to mass arrests and arbitrary detention as a response to peaceful assemblies;**

(c) **Repeal presidential decree No. 3 on the prevention of social dependency;**

(d) **Repeal article 193-1 of the Criminal Code curtailing the freedoms of peaceful assembly and of association;**

(c) Abandon policies based on authorizations and accreditations and move towards a system of notification to ensure respect for the freedoms of assembly, association and expression;

(f) Register the civil society organizations and political parties that have been denied official recognition;

(g) Introduce a moratorium on executions, leading to the total abolition of the death penalty;

(h) Revise and amend the recently adopted inter-agency plan to ensure the inclusion of all recommendations from all human rights mechanisms;

(i) Include civil society organizations working on human rights issues in any revision of the inter-agency plan and in its implementation;

(j) End the practice of discrimination against individuals and groups that are marginalized on the basis of their belonging to a minority;

(k) Draft an anti-discrimination law encompassing all grounds of discrimination.

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Report of the Special Rapporteur on the situation of human rights in Belarus

Corrigendum

1. **Paragraph 60**

For Zakharchenko *read* Zakharanka

2. **Paragraph 94**

For the existing text, *substitute*

94. One other political opponent of the Government remains in prison in Belarus. On 10 July 2015, Mikhail Zhamchuzhny was sentenced to six and a half years of imprisonment under a strict regime. His sentence also bans him from holding positions related to the implementation of organizational and administrative duties for a period of two years and eight months. On 12 October 2016, a court in Minsk found Dzmitry Paliyenka guilty of making threats of violence against a law enforcement officer, a charge related to having participated in a peaceful assembly on 29 April 2016. He was sentenced to two years of imprisonment, but the sentence was suspended for two years. In addition, Uladzimir Kondrus, who had been taken into custody on 14 June 2016 for the alleged crime of rioting in December 2010, was released by a decision of a court, which still sentenced him to one year and six months of restricted freedom.

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